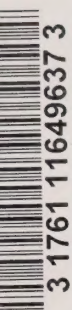


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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

5630

HEARINGS HELD AT
TORONTO

VOL. NO.

39

DATE

May 17, 1967

Official Reporters

NETHERCUT & YOUNG LIMITED
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TORONTO 1, ONTARIO
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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,
Commissioner, at 123 Edward
Street, Toronto, Ontario, on
Wednesday, May 17th, 1967.

E. Marshall Pollock

Counsel to the Commission

APPEARANCES:

Mr. Dennis McDermott)	United Automobile Aerospace,
Sub-regional Director)	
)	Agricultural Implement
Mr. A. Alan Borovoy)	
Counsel)	Workers of America

Sharman K. Leary, Q.C.)	Niagara Industrial Relations
)	Institute and The St.
)	Catharines and District
)	Chamber of Commerce

Nethercut and Young Limited, Official Reporters,
48 York Street, Toronto, Ontario. Per T.F. Conlin,

Toronto, Ontario

Wednesday, May 18th, 1967

---On commencing at 10:00 a.m.

MR. POLLOCK: The United Automobile
Aerospace, Agricultural Implement Workers of America,
George Burt, the Canadian Director, and I think this
morning we have Dennis McDermott, the sub-regional
Director and Mr. A. Alan Borovoy, counsel.

Gentlemen, I can tell you that both
the Commissioner and I have read your brief with
considerable interest, both the original and the
supplement to it, and we are prepared to let you
present it in any manner that you think would serve
the best purposes of yourselves and the Commission.
You can read it and you can talk points and talk about
it and we will have some questions that we will ask
that arise out of the brief and other questions that
arise out of other matters that are of concern to the
Commission. The proceedings are extremely informal
and we hope that anybody that has anything to say will
say it and we will pass the proceedings to you.

MR. McDERMOTT: Mr. Commissioner, if
it would please the Commission, I think we will read
the brief and perhaps pause from time to time to add
anything that might be extemporaneous. Presumably,
you may have questions to ask of us. Is it permissible
to sit while I am reading?

MR. POLLOCK: Of course.

MR. McDERMOTT: I will read from the

1 brief.

2
3 (Mr. McDermott reads the brief from the Introduction
4 down to "...is the picket line." on page 1.)

5 MR. POLLOCK: If I could stop you here.
6 If you are, by those two paragraphs, exhausting all
7 the arsenals on both sides, then perhaps you might
8 consider in the strikers favour, the opportunity that
9 they have now for obtaining other employment, either
10 temporarily or permanently, and also some of the
11 strike benefits that are obtained from the union. I
12 don't say that they are immediately off-setting the
13 other factors, but they are equivalent to the employer
14 being able to carry on his operation. The union and
15 the employees are capable, to some degree, of carrying
16 on their operation.

17 MR. McDERMOTT: It is perhaps more
18 equivalent to the employer being able to invest his
19 money ~~somewhere~~ else during his operation.

20 (Mr. McDermott continues reading brief from "It is
21 necessary..." down to "...their collective censure."
22 on page 2.)

23
24 MR. POLLOCK: May I stop you at this
25 point? You suggest a few people would be won to the
26 striker's cause through appeals to reason and idealism.
27 Now, the usual purpose of a strike, or the reason why
28 a strike is called is that it is alleged that the
29 conditions are so bad that nobody could possibly work
30 under them. Now, don't you think you could appeal to

1 someone on the basis of reason that that was the
2 argument?

3 MR. McDERMOTT: That isn't correct.
4 I beg to differ with you. There are some strikes
5 that are called - sometimes these are called in
6 remote areas - and there the conditions may be so
7 intolerable that nobody could be expected to work
8 under them. In that case, you may launch a massive
9 appeal to the public. But there are other strikes
10 in which there are private, vested interests of the
11 particular employees on strike and there is really
12 no real reason to communicate or solicit public
13 sympathy.

14 MR. POLLOCK: We don't hear much of
15 that latter kind. It seems that every other one
16 falls into the first category where people are
17 operating under slave contracts and abominable
18 conditions and back to the dark ages. I think that
19 you are probably right.

20 MR. McDERMOTT: That is the work of
21 the Public Relations Department of the respective
22 union.

23 (Mr. McDermott continues reading brief from "Apart
24 from the..." down to "...effective communal censure."
25 on page 2.)

26
27 MR. POLLOCK: What do you mean by
28 social pressure?

29 MR. McDERMOTT: Well, I would suppose
30 an analogy of that is what is taking place in the

1 United States in the negro revolution. These are
2 social pressures. This is the collective censure of
3 people who would violate the particular cause that
4 you are fighting for. It puts them in disrepute and
5 they are aligned with something that has a stigma
6 hanging over it.

7 MR. POLLOCK: It certainly doesn't have
8 that effect in Alabama and Georgia and those places
9 where the community, if you are measuring social
10 pressure, must be the gauge, is against these
11 particulars laws and against these people.

12 MR. BOROVOY: It is a conflict of
13 social pressures. On the one hand you are trying to
14 generate social pressure for one position and on the
15 other hand you have the others who are trying to
16 generate it for their position. Here, what you are
17 trying to do is make the picket line interloper feel
18 unpopular with his fellow employees or his peer group,
19 if you like.

20 MR. POLLOCK: How do you do that?

21 MR. BOROVOY: At the plant gate, when
22 he goes in, the fact that there are a number of people
23 there who disapprove of what he does, will immediately
24 make him feel unpopular. He will know that. He
25 will know when he goes through that they don't like
26 his position.

27 MR. McDERMOTT: This is a tremendous,
28 psychological weapon and if a person can walk through
29 a gate with impunity and there are one or two or
30 three pathetic souls standing there with a bedraggled

1 picket sign, that is one thing. But the psychological
2 disadvantage of trying to pass a whole mass of people,
3 many of whom may be fellow neighbours and members of
4 his particular community, is something else again.

5 MR. POLLOCK: Well, isn't he just as
6 stigmatized by working at a struck plant in the
7 community, assuming it is a small enough community
8 that they know the plant is on strike?

9 MR. McDERMOTT: Definitely, but our
10 whole point and purpose is to persuade him not to
11 work in a struck plant.

12 MR. POLLOCK: And you suggest that
13 he doesn't know that if he goes and works in a struck
14 plant, even if there is no picketing, that he is
15 doing something that some elements of the community
16 disapprove of.

17 MR. McDERMOTT: It depends on the
18 individual, of course. He may well know that and
19 in many instances he may not and the picket line is
20 the instrument that brings it forcibly to his attention.

21 MR. POLLOCK: Are there any physical
22 aspects to social pressure?

23 MR. BOROVVOY: There should not be.

24 MR. POLLOCK: There should not be?

25 MR. BOROVVOY: That is correct.

26 MR. McDERMOTT: A large demonstration
27 carries greater moral weight,---

28 (Mr. McDermott continues reading brief down to "...
29 gravity of the issues." on page 2.)

30 MR. POLLOCK: At this point, then,

1 as far as this last paragraph is concerned, you are
2 advancing the type of group support theory, that if
3 you have a lot of people interested in a cause, more
4 people are going to think it is a good cause, than
5 if you only have one or two.

6 MR. McDERMOTT: Absolutely.

7 MR. POLLOCK: How do you separate
8 the advantages of that technique from the disadvantages
9 that attend on large masses of people gathering around
10 and hovering about individuals and causing them to
11 push their way through than, as somebody described
12 as running the gauntlet of the strike?

13 MR. McDERMOTT: We do deal with this
14 later on, but in actual fact, in our experience and
15 we can only speak from our own experience, this
16 doesn't occur. You can have a large, well organized
17 picket line, which doesn't interfere with the due
18 process of law and it doesn't interfere with the
19 pedestrian traffic and it doesn't interfere with
20 anyone, in fact. It is a well disciplined and well
21 organized, tight picket line. As a matter of fact,
22 it is a very exciting demonstration.

23 MR. POLLOCK: I have seen well organized
24 picket lines with people marching up and down in line
25 until somebody goes to cross through this line, and
26 then, like bees to honey, there is a swarm around
27 this fellow and, although nobody is maybe physically
28 touching him, there are about a cigarette paper away
29 from him and calling him a scab and some other things,
30 it is quite a frightening experience, because there is

1 the feeling that something might occur if he walks
2 through, and it is not only the social stigmatization,
3 it is something more meaningful than that.

4 MR. McDERMOTT: Well, he may consider
5 himself to be in danger of some sort of physical harm.

6 MR. POLLOCK: It has been suggested
7 before this Commission, that if you want to have a
8 large number of people there to show that it is not
9 an isolated two or three people that are expressing
10 this idea, but it is a whole group of interested
11 individuals who are making this plea, that you
12 segregate. Now Mr. Borovoy may not like my term
13 "segregation", but you take a group of people who
14 are the bench strength, or the cheer leaders, and put
15 them 50 feet away from the actual entrance to the gate
16 where they don't come into physical contact or even
17 hover around these other people, and they are identified
18 by means of signs and all these other things with the
19 two or three or four people that are walking in front
20 of the gate. You have got the group and yet you
21 have kept the mass away from the individuals who
22 want to cross. What do you say about that?

23 MR. McDERMOTT: I say that I really
24 don't like that idea at all. It seems to me there
25 is a police force in every community and the police
26 force are charged with the responsibility of maintaining
27 law and order, and if something occurs in a picket
28 line, or anywhere else, if there is a congregation of
29 people outside a tavern, or any sort of demonstration
30 anywhere, the police are on hand to take care of that.

1 And the police, in our experience, are quite able to
2 take care of any violence or potential violence that
3 may occur. You don't need an injunction to take
4 care of this sort of thing, you need a police force.

5 MR. POLLOCK: I am not talking so much
6 of the injunction as I am of the particular conduct,
7 what ought to be permitted and what ought not to be
8 permitted before we get to the injunction. The
9 police function is a difficult one. You discuss it
10 later on in your submission and there are many who
11 are saying the police ought not to be there as are
12 saying they ought to be there. You don't want an
13 injunction, you say you want the policeman and when
14 you haven't got an injunction and the police are there,
15 then you say you don't want the policeman.

16 MR. McDERMOTT: I am not saying we
17 don't want the policeman, because the policeman has
18 the same psychological effect on the picket line
19 as the picket line has on the interloper and there
20 is much less likely to be any excitement if there are
21 policemen standing around, standing in front of the
22 pickets, and this has ^a psychological effect on the
23 picket line.

24 MR. POLLOCK: Well, we have been told
25 by other trade union people that police do, in fact,
26 have a psychological effect, but it is to encourage
27 violence, to inflame the picketers.

28 MR. McDERMOTT: Well, they might,
29 under a given situation, and particularly when they
30 are there for the express purpose of escorting people

1 through a picket line. But normally speaking, any
2 time we engage in a strike, in the City of Toronto
3 for example, there is a labour squad of police force
4 and we talk to these people and their people are down
5 there on the first day of the strike and they are
6 placed along the line and, to my knowledge, they
7 haven't had any undue influence on our pickets. They
8 are there to maintain law and order.

9 MR. POLLOCK: Of course that is what
10 you suggest their function is, to escort people
11 through the line. You say the police are charged
12 with the duty of securing the right of entry to and
13 exit from the picketed premises.

14 MR. McDERMOTT: That is right.

15 MR. POLLOCK: So you say that,
16 invariably, they are going to generate this hostility,
17 if that is what they are there to do.

18 MR. McDERMOTT: If that is what they
19 are there to do. But in a great many situations, of
20 course, they are not there for that express purpose.

21 MR. POLLOCK: Maybe when we get to
22 that part of the brief, we can talk about it further.

23 (Mr. McDermott continues reading the brief from "To
24 designate a strike.." down to "...during a lawful
25 strike," on page 4.)

26
27 MR. POLLOCK: Let me stop you at this
28 point. You say, on page 2 and then it follows
29 through on page 3 and page 4, that the thesis underlying
30 this is that you ought, the strikers ought to be able

1 to wage the strike as vigorously as possible. Now,
2 as this brief develops, you are going to tell us
3 within what limits, and there must be some limit as
4 to the vigour. You are suggesting how the strike
5 ought to be operated, but we will get to those later.

6 (Mr. McDermott continues reading brief from "Picketing
7 in Other .." down to "...of the injunction." page 7.)
8

9 MR. POLLOCK: Let me ask you this
10 question and perhaps Mr. Borovoy could answer it.
11 Has any attempt been made to call viva voce evidence
12 at these hearings?

13 MR. BOROVOY: I can't really comment
14 on the practice. It is our recommendation at the
15 end, as you will note, that we are asking that these
16 hearings be confined to viva voce evidence.

17 MR. POLLOCK: Well, there is provision
18 now, as you know, in the rules for that and the
19 only question that arises as to your ultimate sugges-
20 tion is, why has this procedure not been resorted to
21 in the past?

22 MR. BOROVOY: I am not sure that we
23 can answer that, but what we are asking for is that
24 no order issue without it.

25 MR. POLLOCK: We are talking now
26 against injunctions that are issued during legal
27 strikes.

28 MR. BOROVOY: This part deals with
29 the procedures for all strikes.

30 MR. POLLOCK: So that you want notice

1 on illegal strikes as well?

2 MR. BOROVY: Notice before picketing
3 is restrained, so that how does one determine whether
4 a strike is legal or illegal, unless there is the
5 opportunity to present evidence in argument?

6 MR. McDERMOTT: We have experiences
7 where someone swears on an affidavit that an 18 year
8 old female, weighing about 100 pounds soaking wet,
9 did strike the front of his automobile with her tiny
10 fist thereby inflicting damage and threat to life and
11 limb and opportunity to run a business. They got
12 an injunction on that basis. The injunction is
13 perhaps returnable in four days for/ extension to
14 perhaps 10 days. While we are waiting for all this
15 to happen, the plant is filled with scabs and the
16 strike is over.

17 THE COMMISSIONER: We are assuming
18 that the strike is illegal. You are including both
19 legal and illegal. I am restricting it to illegal.
20 An illegal strike, does it have any right to a picket
21 line?

22 MR. McDERMOTT: Illegal strikes may
23 be a different matter entirely.

24 MR. BOROVY: What we are saying, sir,
25 is before a restraining order issues against the
26 picketing, whether it be in a legal strike situation
27 or not, that proper notice be given to the other side
28 so that representations could be made prior to the
29 issue of the restraining order.

30 MR. POLLOCK: It is supposed to argue

1 the legality or illegality.

2 MR. BOROVY: Yes, because you can't
3 assume in advance that the strike is illegal unless
4 argument takes place.

5 MR. POLLOCK: In some cases it is
6 pretty clear and in some cases it might be border-line.

7 MR. McDERMOTT: Quite often illegal
8 strikes spring from / illegal actions of management as
9 a retaliation.

10 THE COMMISSIONER: Well, give me an
11 illustration of that.

12 MR. McDERMOTT: Where management is
13 violating the collective agreement with impunity and
14 refusing to abide by the agreements that it made.

15 THE COMMISSIONER: And you think you
16 have a right to strike in that case?

17 MR. McDERMOTT: I am not saying we
18 have the right but I am saying it is a perfectly
19 natural reaction on the part of the employees collectively
20 to retaliate by simply saying if they can violate
21 the agreement, so can we.

22 THE COMMISSIONER: Well an active
23 retaliation can't justify itself. It is illegal, and
24 I understood that the function of the police, among
25 other things, was to maintain legality around the
26 premises.

27 MR. McDERMOTT: It is also illegal
28 for management to deliberately ---

29 THE COMMISSIONER: And there are means
30 and remedies for that.

1 MR. McDERMOTT: And the worker is in
2 a bind in this situation. With respect, the corporate
3 giants of this society exercise unprecedented power.
4 They have vast resources and they wield considerable
5 political influences and the worker can react in only
6 one way. He has to take collective action.

7 THE COMMISSIONER: Isn't it an
8 adequate way that they file a complaint?

9 MR. McDERMOTT: They file a complaint
10 and it may be something that can only be stopped by
11 immediate action.

12 THE COMMISSIONER: Well, what you are
13 saying is that it can only be stopped by illegal
14 action and that should not be restrained. I think,
15 generally speaking, your submission, here is very
16 reasonable.

17 MR. McDERMOTT: I didn't say it
18 shouldn't be restrained, sir. I am trying to explain
19 what the natural reaction of a group of people is in
20 giving vent to its frustrations.

21 THE COMMISSIONER: I'll grant that,
22 but we must restrain these actions if we want a
23 lawful society.

24 MR. McDERMOTT: Then we should find
25 some way of restraining management who trigger these
26 sort of things. The workers don't go out on the
27 sidewalk for the fun of it.

28 THE COMMISSIONER: But your agreement
29 provides for that.

30 MR. McDERMOTT: But they sit there and

1 ignore the agreement and what can the employees do?

2 MR. BOROVOY: Without attempting to
3 defend the illegal actions that employees from time
4 to time may engage in in these situations, I think
5 it must be appreciated that when the employer violates
6 the agreement, it may take several months until
7 adjudication is finally reached; when the employees
8 violate the agreement, adjudication by way of injunction
9 or some expeditious action of that kind occurs very
10 quickly and, without necessarily proposing a remedy
11 at this stage, I simply point out that there is an
12 inequity between the relief available to the employees
13 and the relief available to an employer under such
14 conditions.

15 THE COMMISSIONER: That is the act
16 done by management is distinct by the act done by
17 the employees. They are different in their character.

18 MR. POLLOCK: I suppose one of the
19 remedies that could be achieved is that if you appeal
20 the Rights of Labour Act, the union could obtain an
21 injunction against the employer for breaching the
22 collective agreement.

23 MR. BOROVOY: That is a possible
24 alternative.

25 MR. McDERMOTT: The frustrating part
26 about all this to the worker, the average worker who
27 works in the plant, and for that matter, his union
28 representative, full time or otherwise, is that in
29 these situations which are normal differences that
30 arise between organized management on the one hand and

1 organized labour on the other hand, suddenly has to
2 surround himself with the legal profession in order
3 to get anywhere. It is costly and time-consuming
4 and damned irritating to the worker. He is not always
5 willing to pause because these situations are charged
6 with emotion. And I say again, that there may be a
7 great many of these illegal acts but they don't come
8 about over frivolous issues. For the most part,
9 they are issues that are of deep concern to the people
10 concerned. The workers are not interested in walking
11 the sidewalks, they are interested in making money,
12 that is why they are there. But the whole emphasis
13 of this matter is placed on the backs of the trade
14 unions and very little is said about the irresponsibility
15 of organized management. This is what bothers us.

16 MR. POLLOCK: Well, you don't develop
17 it in the brief, and perhaps you might give considera-
18 tion to what can be done against management to off-set
19 these factors, rather than being forced out on strike.
20 I can give you one suggestion about an injunction
21 against management breaching the collective agreement,
22 which is a speed remedy.

23 THE COMMISSIONER: Well, under the
24 language of the present agreement, you can't do that.
25 Isn't the only resort to arbitration?

26 MR. BOROVOY: Right now it is. You
27 must appreciate that this discussion arose in another
28 context and that is why these are some suggestions
29 that we would have to take under consideration and
30 perhaps write you subsequently.

1 (Mr. McDermott continues reading brief from "In this
2 way,..." down to "...'dangers of its abuse'." page 7.)

3 THE COMMISSIONER: I think before
4 you die you will reach more conservative expressions.

5 MR. BOROVY: I thought he had become
6 more conservative in other respects, sir, and not
7 with respect to labour injunctions.

8 MR. POLLOCK: Nobody knows what happened
9 to Mr. Greene, though.

10 (Mr. McDermott continues reading brief from "The
11 realities of..." down to "...no notice at all." page 8.)

12
13 THE COMMISSIONER: I don't think any-
14 body disagrees with that at all. We must have some
15 agreement as to how that notice can be given,
16 to have a grievance officer at hand, perhaps. You
17 might be able to make some suggestions about this.

18 MR. POLLOCK: This is between counsel,
19 if you are talking about a union, a union that is
20 represented by the large firm on Richmond Street that
21 acts considerably for unions and perhaps there is
22 a handful of management lawyers whom you can single
23 out. There are many circumstances where the union
24 denies any knowledge or responsibility for what is
25 happening. "We don't know anything about it", and you
26 can't serve in all circumstances, the union, because
27 they have these mystery pickets, or ghost pickets, or
28 whatever they are calling them these days, and all
29 unions don't have lawyers, or they don't have all
30 the same. Perhaps, I think, what the Commissioner is

1 suggesting is that you might tell us something about
2 how to provide notice in all circumstances because
3 I have no doubt that if there is an opportunity to
4 give notice, and I think the practice is now, for
5 the last year or so, that short notice, sometimes
6 by telephone and sometimes by walking down the hall
7 in this relationship we are talking about, notice is
8 given. It is a question of whether it is accurate
9 or not. That is something else. But you might add
10 that to your list.

11
12 (Mr. McDermott continues reading brief from "The
13 comments of..." down to "...appeal should lie." page 8.)

14 MR. POLLOCK: I would like to stop
15 you at this point. The term "unlawful" is pretty
16 ambiguous. It means merely contrary to law. The
17 reason this gray area of what is lawful and what is
18 unlawful, there have been many suggestions from both
19 sides as to what conduct ought to be permitted and
20 what is permitted and what ought not to be permitted
21 and what isn't permitted. Perhaps at this stage
22 you might tell us what lawful activities a picket
23 line can engage in, and what is meant by this elusive
24 term, "peaceful picketing".

25 MR. BOROVY: I am having some
26 difficulty in replying in that abstract way. Perhaps
27 you might cite examples of what the gray areas might
28 be.

29 MR. POLLOCK: Well, there are some
30 that suggest people that are wanting to go into the

1 plant. They have to get a pass to go in from the
2 people that are picketing. Or they have to say,
3 "Please, may I go in" or, they have to push their
4 way through the crowd and people stopping them and
5 standing in front of them when they take a step to
6 the right the other people step in front of them
7 and it is a dance back and forth in front of the gate.
8 They stop cars and they tell them to roll down their
9 windows and it is almost a police function in reverse.
10 It is that type of activity. Some say it is good
11 and some say it is not so good and some say it is bad.
12 What do you say?

13 MR. McDERMOTT: Well, I think that
14 the picket lines are not brick walls in normal
15 circumstances where we have a plant on strike and
16 there is a very large office force, then we permit
17 the office force to cross the picket line. But
18 there is a pass system used for a very good reason.
19 I think it is good to have regulations with respect
20 to crossing the picket line. I wouldn't even consider
21 at this point, or at this stage of the game, trying
22 to define which is lawful and which is unlawful. All
23 we are simply saying in this situation is that if there
24 is a gray or unlawful act - for example, supposing
25 somebody blocks the path of a pedestrian on a normal
26 walk down the sidewalk ---

27 MR. POLLOCK: I am not talking about
28 those people. That is not gray, it is clear black.

29 MR. McDERMOTT: All we are saying is
30 that if somebody blocks a civilian it is not sufficient

1 reason for somebody to run down and get an ex parte
2 injunction. We are saying the police are there and
3 they can handle that.

4 MR. POLLOCK: But what if people want
5 to go into the plant, not only the office workers,
6 but the employees who perhaps aren't in sympathy with
7 the strike or outside people who want to work there
8 on those terms and conditions?

9 MR. McDERMOTT: Well, the point there
10 is, I think, that the office worker is not subject
11 to any pressure by the production of his pass. They
12 know he is entitled to go through. It is the other
13 person, be it someone who wants to go on business or
14 someone who wants to go in and work, he would then
15 be subject to the social pressure of the picket line
16 and he would be subject to communication and persuasion
17 not to go in.

18 MR. POLLOCK: But what if he doesn't
19 want to stop and listen to you?

20 MR. McDERMOTT: Then he goes in and
21 the police are there. I don't think he should, I
22 don't think it is proper that he should have the
23 right to go in.

24 MR. POLLOCK: Well, that is another
25 issue and the legislature hasn't passed on that yet,
26 but so far as this contest between the employer and
27 the union, to persuade people to respect their
28 respective sides, the employer says, "I am against
29 fighting these other employees of mine who don't want
30 to accept the terms that I am offering and the way I

1 am doing it is that I am offering the terms to other
2 people to see if they will accept it." It may very
3 well be that no one will accept it and the employer
4 will settle. But if some people will accept it,
5 the individual on the outside who wants to get a job
6 and who is prepared to accept these conditions, why
7 should he be stopped, physically stopped, at the
8 entrance to the gate and abused, at least vocally,
9 if not physically?

10 MR. McDERMOTT: Well, Mr. Pollock, look.
11 You are talking about a person who is not a member
12 or an employee on strike. You are talking of someone
13 who wants to go to work. Well, my answer to you is,
14 I am a lawyer. I don't want to belong to the Bar
15 Association and I don't want to belong to the Law
16 Society, I just want to practice law. Can I? They
17 don't have to put a picket line on me. It is much
18 more effective than that.

19 MR. POLLOCK: I don't think it is a
20 parallel situation.

21 MR. McDERMOTT: I do. I think it is
22 very parallel.

23 MR. POLLOCK: Well, answer my other
24 question then, without asking one.

25 MR. McDERMOTT: He will go through
26 the picket line because the police will escort him
27 through. But again, if that person wants to go through
28 the picket line and the pickets attempt to persuade
29 him and they fail and then he really wants to insist
30 on going through the picket line, the police are there

1 to provide an escort for him to go through. Again,
2 he can go through that picket line without the employer
3 running down to get an ex parte injunction or some
4 other form of injunction.

5 MR. POLLOCK: We are not talking about
6 the injunction or the police escorting him through.
7 I am asking you, in the context of lawful activity
8 on a picket line, whether it is lawful to prohibit
9 or prevent these people access to the plant which
10 would require a policeman to go and help them through
11 the line, or an injunction to keep them out of the way.
12 An injunction that declares these rights, does it
13 come as a surprise to trade union people that they
14 are not able to physically prevent people from going
15 through a plant that is on strike?

16 MR. BOROVOY: I don't think that anything
17 in this brief is defending the right to physically
18 prevent people from going into the plant. I don't
19 think that is the point at all. I think what we
20 are asking for is the right to be on hand so that
21 those who do go into the plant will at least feel their
22 unpopularity with their peers on the picket line.
23 I think that is really the point. There is no
24 recommendation here that we be allowed physically
25 to prevent them.

26 THE COMMISSIONER: I think sometimes
27 you confuse your idea of what the law is with what
28 the law ought to be. And that makes the difficulty
29 for anybody representing labour to state frankly that
30 his real object is to intimidate. Intimidation is

1 something that takes place every day in all relations.
2 It dominates the mind of another. We have what we
3 call a reputation and we don't like to see that
4 reputation destroyed, and if you expose us to a
5 situation in which it may be, you intimidate us so far.
6 I wouldn't be afraid to use the word intimidation,
7 because that is really what you have in mind when
8 you speak about mass picketing.

9 MR. BOROVY: I think here, sir, it
10 would depend on the kind of intimidation we are talking
11 about. Intimidation itself is often a confusing word.

12 THE COMMISSIONER: Intimidation,
13 fundamentally, is intimidation of the mind and it may
14 be followed by intimidation of the physical members of
15 the body, but normally, and properly, it is intimidation
16 of thought and attitude. You feel ashamed and you
17 feel disloyal and you feel all of those things but
18 those are subjective conditions.

19 MR. BOROVY: As far as we are
20 concerned, sir, we believe that intimidating people
21 with respect to their reputations and popularity is
22 a perfectly justified form of intimidation, whereas,
23 intimidating them with respect to their physical
24 security is not.

25 THE COMMISSIONER: That is a proper
26 distinction to be made, I think, but on the other hand,
27 after all, these things can reduce themselves to what
28 one very frank witness said. When asked "why do you
29 exceed that," he said "It is human nature" and when
30 you talk about working up to high pressure in your

1 emotions, you support that, and there is no doubt
2 that when you have a mass of men around a plant,
3 which they come to look upon after years of association
4 as something belonging in one sense to them, they are
5 very easily pushed past the line of control of
6 intimidation and they surrender to it.

7 MR. BOROVVOY: At that stage, we say
8 a deterrent against that and a protection to the others
9 would be a sufficient police force available to prevent
10 it.

11 THE COMMISSIONER: But why do you
12 welcome policemen arresting them as against notice
13 to appear before a judge to answer why you disobeyed
14 an injunction. One is much more respectable in that
15 sense than the other, and yet you claim you ought
16 to go to the least respectable or the lesser respectable.

17 MR. BOROVVOY: I am not sure that I
18 follow that, sir, because what we are saying is
19 that the people should be permitted to be there in
20 sufficient numbers to socially intimidate.

21 THE COMMISSIONER: But we assume they
22 have gone beyond the proper line. Now, in that
23 situation, you say "Let the police look after them,
24 don't resort to an injunction". Then you prefer, as
25 I have said, to be brought by policemen and dragged
26 off to some kind of lock-up, to being served with a
27 notice of violation of an injunction.

28 MR. McDERMOTT: Absolutely we prefer it,
29 because there may be one isolated instance involving
30 one isolated individual.

1 THE COMMISSIONER: In a small situation,
2 you haven't got the police force and even when you
3 do have a small police force, they are the neighbours
4 of these men. It is the most difficult thing in the
5 world to put a policeman in a position of that sort,
6 and consequently, that is why even the law in the
7 United States contemplates the failure, as they call
8 it, of police protection. But that simply means not
9 from numbers but also from the relation to those who
10 are striking.

11 MR. BOROVY: I think if I can make
12 this distinction as well, sir, that the policemen
13 will usually attempt to arrest the guilty party. The
14 injunction usually does not distinguish between the
15 guilty and non-guilty.

16 MR. McDERMOTT: This is the difficulty.
17 If you have one offender on a picket line, and quite
18 often it will occur, particularly during the early
19 days of a strike, you may have a young, irresponsible
20 hothead who does something contrary to the instructions
21 or the specific instructions of a specific captain.
22 But he is a singular offender and he may have committed
23 an offence and he may well be punished for it, but
24 why punish the whole, collective interest of everybody
25 over the one singular and isolated offence of one
26 individual?

27 THE COMMISSIONER: Only because you
28 admit that the internal pressures on the strikers
29 themselves bring him to the point where he becomes
30 not rational.

1 MR. McDERMOTT: If I commit an act
2 which is unlawful, I may be arrested and I may be
3 fined or imprisoned, or both, but they don't arrest
4 my whole family, my wife and my children and my
5 neighbours, as a result of my action. And this is,
6 in effect, what happens when you have an incidence
7 on a picket line.

8 MR. POLLOCK: You do if they are helping
9 you.

10 MR. McDERMOTT: But this may be one
11 isolated instance and no one is helping him.

12 MR. POLLOCK: I will agree that there
13 are those cases where there are a large number of
14 people picketing and it is peaceful except for one
15 isolated person who does something. In many cases
16 the unions take charge of that fellow and throw him
17 in the back of a car and take him out of there. There
18 are, equally, cases in which there are 20 people that
19 do that, or 15 at the same time. When people go in
20 and the same emotions apply to a lot of people, "They
21 are going in to take my job, crossing the picket line
22 to take my job" and they cluster around this fellow
23 and they are pushing and shoving and there are
24 altercations.

25 MR. McDERMOTT: All right, with a large
26 mass of people, you arrest the offenders, be it 15
27 or 20 or whatever. If you have a bunch of students
28 at a football game who are drinking and acting up,
29 you don't arrest the whole audience at a football
30 game.

1 MR. POLLOCK: And you don't arrest the
2 whole picket line either.

3 MR. McDERMOTT: But the action taken
4 by the injunction affects the collective interest of
5 everyone involved.

6 MR. BOROVY: The analogy may be that
7 you don't stop holding a football game because
8 occasionally there is someone who behaves that way
9 in that kind of situation.

10 MR. POLLOCK: And you don't stop
11 having picketing either.

12 MR. BOROVY: But there is a question
13 of whether or not you are going to weaken the effective
14 picketing and, as I say, if one bears in mind that
15 the purpose of it is social pressure, then if you
16 are going to greatly reduce the numbers on a picket
17 line, you are effectively going to weaken
18 the only weapon the strikers have in their contest
19 with management as far as continuing operation is
20 concerned.

21 MR. POLLOCK: Well, perhaps you could
22 instruct us on this matter. This social pressure
23 aspect seems to be of very considerable importance
24 to the trade union movement and particularly to you
25 people in the sense of this brief. What activities
26 are conducted by the trade unions' officialdom in
27 insuring that this privilege or right isn't lost by
28 impetuous actions of its own members?

29 MR. McDERMOTT: We have a very scrupulous
30 procedure. Prior to a strike, we select people that we

1 consider to be experienced and responsible and we
2 make them responsible for a certain section of the
3 picket line. In many cases we have what we call
4 our own flying squad with automobiles and people in
5 charge so that they can remove people from the picket
6 line that we think are likely to cause any controversy.
7 We go through a number of pretty meticulous actions
8 like this to do our utmost to insure that our picket
9 line is not endangered by irresponsible individuals.

10 MR. POLLOCK: Unfortunately, I think ---

11 MR. McDERMOTT: As a matter of fact,
12 as you probably know, the so-called labour squad of
13 the Metropolitan Police sit down with the union
14 officials some considerable number of days beforehand
15 and, in our case we always set a deadline and they
16 know when the strike is going to happen. If the
17 deadline is midnight next Wednesday, that is when the
18 strike will happen. When the Labour Squad sits down
19 and hears about this, they come and sit down with us
20 and we have a certain number of things written down
21 on paper which they give us, which spells out our
22 rights and responsibilities and so on. We, in turn,
23 produce documents which spell out to our picket captains
24 and other responsible people, the dangers of such and
25 such and we urge them to head it off wherever they
26 possibly can. So it isn't just a loose conglomeration
27 of people running up and down and having an emotional
28 demonstration.

29 THE COMMISSIONER: When you used that
30 expression, "conglomeration of people" you had in mind

1 illegality. You have in mind ungoverned action and
2 if you go back to 1945 you will see what it may result
3 in. At the Ford plant itself, you will remember
4 that the street was filled with automobiles that had
5 been taken from their owners by force, in some cases,
6 and you couldn't move a foot on that blocked highway
7 which blocked the plant gates. Those are the things
8 that result when you really attempt to make the picket
9 line effective.

10 MR. McDERMOTT: That was the result
11 of the Rand Formula, Your Worship.

12 THE COMMISSIONER: No, it wasn't, it
13 was before the formula was thought of. That inevitably
14 may be and if you have sufficient steam pressure
15 within ---

16 MR. McDERMOTT: I know, sir, but this
17 is what you were talking about before, this matter
18 of intimidation. But it is intimidation of both
19 sides, isn't it?

20 MR. POLLOCK: Well, you may not have
21 had that type of thing.

22 MR. McDERMOTT: We have had good
23 teachers on intimidation and we know all about
24 intimidation.

25 MR. POLLOCK: Well, you may not have
26 had that experience and we will pass by Wolverine Tube
27 for the moment, but other unions have had that
28 experience that they aren't prepared or they don't
29 effectively control the activities on the picket line.
30 If we look up at Markham, in the Amalgamated Electric

1 dispute, the same type of thing happened. Cars were
2 parked to block intersections and ambulances and,
3 in this particular case, fire engines couldn't get by
4 because they had to use this route. If everybody
5 were responsible, as you are talking about, this
6 Commission wouldn't be here today.

7 MR. McDERMOTT: I know, but the thing
8 that the Commissioner is talking about in 1945, it
9 wasn't too long after that the Ford Motor Company
10 goons literally beat our people almost to death in
11 the battle of the overpass. That was the product of
12 the environment of that day. And where you have
13 violence on picket lines or where you have this kind
14 of altercation today, in every case, I would suspect,
15 if you analyse the situation properly, you will find
16 that it depends to a great extent on the attitude of
17 behaviour of that particular employer, how the picket
18 line reacts. This sort of thing doesn't happen to
19 the civilized employer engaged in a strike.

20 THE COMMISSIONER: Since when have
21 you been having these negotiations with the police
22 that you mentioned and which I think are ---

23 MR. McDERMOTT: For many years, sir.

24 THE COMMISSIONER: Well, take the last
25 four years, how many injunctions have been served on
26 your labour organizations, in Toronto.

27 MR. McDERMOTT: In Toronto, I would
28 say, in the last four or five years, probably about
29 5 or 6 at the most.

30 THE COMMISSIONER: Were they contested

1 in any way?

2 MR. McDERMOTT: No, sir.

3 THE COMMISSIONER: Why not?

4 MR. McDERMOTT: Because in each and
5 every case I believe there were ex parte orders.

6 THE COMMISSIONER: Well, they became
7 effective.

8 MR. McDERMOTT: In each and every case
9 we either settled the strike or lost the strike.

10 THE COMMISSIONER: Not within four
11 days. An application is made in four days to continue
12 it. Now, what was the position of the union in
13 relation to the extension of that injunction?

14 MR. McDERMOTT: Because we get into
15 this fix that we described earlier, that our counsel
16 advises us that he has no alternative but to agree
17 to an extension. As a result, and I couldn't say
18 positively, but it seems to me in most cases that
19 we did agree to the extension for those reasons.

20 THE COMMISSIONER: Yes, and in many
21 cases, and I don't know in your case how many or
22 whether you did, but certainly that has been the
23 result in most injunction cases. But what puzzles
24 me is that if this was obtained in the first instance
25 without proper ground-work and if it was baseless,
26 why didn't you show that to the court?

27 MR. BOROVOY: Sir, if I can say this,
28 very often I think that counsel in positions of that
29 kind will probably consent to a continuation of the
30 order with some modifications, that is a token picket

1 line because they expect that that is what the court
2 is going to order in any event.

3 THE COMMISSIONER: Only on the basis
4 that the facts were sound as presented to the court.

5 MR. BOROVY: I think very often in
6 these situations, the courts tend to limit the number
7 of pickets.

8 THE COMMISSIONER: But suppose that
9 the affidavits that were used to obtain the ex parte
10 injunction were due to a total misconception, that
11 they have no basis, in fact, at all, that they were
12 utterly worthless. Would you challenge that or
13 wouldn't you?

14 MR. BOROVY: If I could put it this
15 way to you, sir. Sometimes the affidavit may be
16 valid, that is violence may have been committed. Now,
17 the court may then restrain picketing or reduce picketing
18 in response to that valid evidence, but our point is
19 that even if there may have been some incident of
20 violence, that is no reason to restrain all the other
21 pickets, or most of the other pickets, and our
22 experience has been that the courts will do that anyway.

23 MR. POLLOCK: Then your argument is
24 not one on facts or evidence, your argument is one
25 on law. It is a demur, almost. We take it that there
26 is some evidence of violence on the line and your
27 position is, notwithstanding that, we feel that you
28 shouldn't limit the picketing. You don't need
29 affidavits for that type of argument. That is a
30 legal argument.

1 MR. BOROVVOY: But I am saying that
2 you will get consent orders that union counsels, in
3 situations like that, often will consent, expecting
4 the courts to issue that type of order anyway, so
5 it makes it - rather than go through a ritual here,
6 they simply consent to it in advance.

7 THE COMMISSIONER: That means that
8 you accept the fact that there was a basis for its
9 issue in the first instance.

10 MR. BOROVVOY: But this is what we
11 are challenging, sir. We are saying that there may
12 in fact have been violence, and it should not have
13 resulted in that kind of court order.

14 THE COMMISSIONER: Well, I don't think
15 you are in a good position to criticize the courts
16 where you refuse or decline to take advantage of
17 any of the means open to you to establish the fact
18 that the injunction was improperly issued.

19 MR. McDERMOTT: We don't refuse or
20 decline, sir. In many cases it becomes an academic
21 problem. Perhaps what we should do in some cases
22 is let the whole matter come to trial anyway as a
23 matter of principle.

24 THE COMMISSIONER: But I am dealing
25 with the application to continue with the injunction.
26 That is when you can be prepared to go with witnesses
27 if necessary, to show that the whole basis was
28 nonexistent.

29 MR. POLLOCK: What Mr. Borovoy is
30 saying is that the witnesses can't show that the bases

1 are, in fact, nonexistent, then the argument is a
2 legal one and that hasn't been advanced and perhaps
3 Mr. Borovoy is suggesting, if I interpret him
4 correctly, is that it won't be successful if it is
5 advanced, because the law is not as Mr. Borovoy wants
6 it to be.

7 MR. BOROVY: That is the point, yes,
8 and that is why we are here, because in our view,
9 orders should not issue under those circumstances.
10 And I am sorry to interrupt you, but because of the
11 futility which is often felt on the union side of it,
12 they will consent to these things because it is far
13 less expensive for their clients than to go through
14 a hearing which is not likely to produce a favourable
15 result because of the state of the law.

16 MR. POLLOCK: Well, all of those
17 references you have made to the procedural aspect
18 and the quotes of Frankfurter and Greene are irrelevant
19 to that. You are not worried about it being ex parte,
20 or you are not worried about being able to cross-
21 examine on affidavit. You are worried about being
22 able to argue the point of law that says "All right,
23 granted that, what about this".

24 MR. BOROVY: But it is not relevant
25 to this point, but it is relevant to the otherwise
26 improper procedures and we are concerned about both.
27 I don't think one needs to say that we are concerned
28 only about the state of law, we are also concerned
29 about the state of the practice as well.

30 MR. POLLOCK: Academically.

1 MR. BOROVVOY: Oh, no.

2 MR. POLLOCK: Well, if you can't and
3 you haven't disproved the veracity of the affidavits
4 used to obtain injunctions, then I don't see what
5 your procedural argument is.

6 MR. BOROVVOY: But you are simply
7 fastening on the very limited experience that one
8 staff person has had in a particular area, and this
9 discussion is an outgrowth of that. There are many
10 other complaints that, in many other situations,
11 these procedural improprieties lead to bad results.

12 THE COMMISSIONER: What you are
13 suggesting, Mr. Borovoy, is that we ought to try
14 and eliminate the picket line by some means or other
15 where you don't have to run this risk? You get rid
16 of this nuisance.

17 MR. McDERMOTT: That is a very fascinat-
18 ing course, and in many of our situations, in effect,
19 we don't need picket lines.

20 THE COMMISSIONER: But when you close
21 the plant it would seem to me to dispense with the
22 necessity of a picket line.

23 MR. McDERMOTT: It depends again, sir,
24 on the attitude of the employer.

25 THE COMMISSIONER: Of the employer?
26 I think you are associating with that his power to
27 bring in new workers.

28 MR. McDERMOTT: Yes. We strike to
29 General Motors; and they are on strike and they
30 recognize them and take their lumps and they understand

1 it. We may have a large picket line for the first
2 two or three days and then the pickets disperse and
3 thereafter we have, what is in effect, a token picket
4 line, but we reserve our right, of course, if
5 General Motors were to depart from this normal procedure
6 in a strike, to call up our reserves.

7 THE COMMISSIONER: If you have a large
8 number of employees and they all go on strike, then
9 the plant is closed and that is the end of it. All
10 you have to do now is maintain that closure, isn't that
11 so? You don't need a picket line for that.

12 MR. McDERMOTT: Oh, no.

13 --Short recess.
14

15 (Mr. McDermott continues reading brief from "The
16 scope of the...." down to "...in statute form." page 8.)
17

18 MR. POLLOCK: Perhaps Mr. Borovoy
19 could give some information on the statute as to
20 what might be articulated.

21 MR. BOROVY: Perhaps we might point
22 out something where the U.A.W. has the experience.

23 MR. POLLOCK: Well, we hope that you
24 will expand on that.

25 (Mr. McDermott continues reading brief from "The
26 jurisdiction to.." down to "...period of time." page 10.)
27

28 MR. POLLOCK: With regard to that,
29 what is your interpretation of sub-section 2 of section
30 1 of the Labour Relations Act? And if you want me to

1 read it to refresh your memory, I will read it:

2 "For the purposes of this Act, no
3 person shall be deemed to have
4 ceased to be an employee by reason
5 only of his ceasing to work for his
6 employer as a result of a lock-out
7 or strike, or by reason only of his
8 being dismissed by his employer
9 contrary to this Act or to a collective
10 agreement."

11 MR. BOROVY: I am not sure, I
12 wouldn't like to venture a definitive opinion as to
13 what that means here. I know it has been, and there
14 are cases on it. Whatever it means, however widely
15 or narrowly it may have been construed or may be
16 construed, our suggestion is that more of the specific
17 aspects of the employment status should be written
18 into the Act and preserved in the event of a strike
19 situation.

20 MR. POLLOCK: Well, how can you preserve
21 any more than the fact that the employee who is on
22 strike does not cease to be an employee by reason of
23 that fact?

24 MR. BOROVY: Because this may leave
25 it open to other interpretations. If I were acting
26 on the other side, I think I could find ways of
27 arguing at least that it isn't by virtue only of his
28 going on strike that he ceased to be an employee, but
29 by virtue of something else, namely the fact that I
30 had to replace him, or something of that kind. In other

1 words, there is sufficient ambiguity in that wording,
2 and what we are suggesting is that it be shored up
3 by spelling out more of the components of the employ-
4 ment status that ought to be perpetuated.

5 MR. McDERMOTT: If I recollect correctly,
6 in Wolverine Tube, the strikers were denied the right
7 to vote on certification and/or their vote was nullified
8 by the so-called scab employees who had replaced them
9 and who were greater numerically than the actual people
10 who went out on strike. As a result, in our opinion
11 at least, there was not a proper representation of
12 vote in that situation.

13 THE COMMISSIONER: You didn't contest
14 that in any way except before the Labour Board?

15 MR. McDERMOTT: I think we did appeal
16 it before the Labour Board, sir.

17 THE COMMISSIONER: But you didn't
18 appeal it to the court of appeal?

19 MR. McDERMOTT: No.

20 MR. POLLOCK: The only case I am
21 familiar with is the Royal York case. Do you know of
22 any others?

23 MR. BOROVVOY: Not offhand, I don't.

24 MR. POLLOCK: Perhaps you might check
25 your records and advise us. We would be interested.

26 (Mr. McDermott continues reading brief from "THE
27 TIMING OF..." down to "...the bargaining relationship."
28 on page 10.)

29
30 MR. McDERMOTT: I think collective

1 bargaining should commence either 60 days or 90 days
2 prior to the expiry date, and in our view, this is
3 sufficient time for the two parties to negotiate the
4 terms of a new collective agreement.

5 MR. POLLOCK: It is sufficient, you
6 say?

7 MR. McDERMOTT: Yes, because in actuality
8 what happens in a great many instances, there is a
9 great deal of mechanical bargaining and no real,
10 down to earth, proper collective bargaining with a
11 series of meetings which simply wiles away the time
12 and then you go over the conciliation process and
13 a great deal of the time, collective bargaining is
14 really wasted.

15 THE COMMISSIONER: You think that
16 conciliation is effective, sufficiently, to preserve it?

17 MR. McDERMOTT: Do I think conciliation
18 is effective? No, I do not, sir.

19 THE COMMISSIONER: You would abolish
20 conciliation?

21 MR. McDERMOTT: Yes.

22 MR. POLLOCK: What effect would that
23 have. Is what you are saying that the last few
24 days of bargaining, whenever they occur, whether they
25 occur during the ordinary collective bargaining or
26 whether they occur at the end of conciliation or
27 after conciliation, it is the last days that are
28 effective.

29 MR. McDERMOTT: No, don't misunderstand
30 me. What we are saying here is that with the existing

1 conciliation process which has been streamlined a
2 great deal more than it was years ago, we can go
3 through the conciliation process and we can go through
4 the collective bargaining process and we can go
5 through the whole thing in the 60 or 90 days that
6 we have.

7 THE COMMISSIONER: At the present time
8 you don't have conciliation before the contract is
9 ended.

10 MR. McDERMOTT: We can, I don't think
11 that is a bar, we can apply for conciliation, I
12 believe now, sir, at any time. There used to be
13 the 30-day section, but that is eliminated.

14 MR. BOROVOY: I think also what we
15 are saying is that there should not be the obligation
16 to conciliation, that the vote to strike should arise
17 at the expiry date of a contract, but if the parties
18 wish to seek conciliation, they can always mutually
19 agree to extend the effective strike days.

20 MR. POLLOCK: It would have to be a
21 bilateral agreement.

22 MR. BOROVOY: Yes.

23 MR. McDERMOTT: But the permissible
24 strike date would be the expiry date.

25 MR. POLLOCK: Is that the experience
26 in the United States where they have "no contract, no
27 work," would meaningful bargaining occur at an earlier
28 date if there were fewer strikes?

29 MR. McDERMOTT: I would believe that
30 to be true, although I can't say it with too much

1 authority. It certainly would eliminate this very
2 thorny problem of the retroactivity which is always
3 an issue which sometimes upsets an otherwise mutually
4 acceptable settlement.

5 THE COMMISSIONER: Do you think that
6 two months would be adequate for that purpose?

7 MR. McDERMOTT: I think so, sir.

8 MR. POLLOCK: If in the automobile
9 industry, your contract expired at a time towards the
10 end of the model year, when the company was, according
11 to past practices, ready to lay off people, how
12 effective would your right to strike at that stage be?

13 MR. McDERMOTT: We would have to take
14 our chances on that.

15 MR. BOROVY: We don't expect the law,
16 however, ---

17 MR. McDERMOTT: As it turns out, they
18 do not expire at the moment, during this period that
19 you are talking about.

20 MR. POLLOCK: Then it would become
21 a negotiable item as to the expiry date, as to when
22 it is going to expire, because I understand some of
23 the complaints on both sides against conciliation are
24 that it delays the effective date and some of the
25 unions that are adversely affected, so that it can
26 delay the strike until the middle of winter and in
27 some cases where they would be free to strike during
28 the middle of winter, the employer says, "Well, this
29 is delaying it until spring when I am ready to open
30 it up again and why don't they make them strike during

1 the wintertime". It is a flexibility there which,
2 if it is removed, is going to create additional
3 problems. There is going to be another very significant
4 item on the bargaining table.

5 MR. McDERMOTT: Your expiration date
6 is surely a matter for the parties to bargain and
7 for the union to tactically try and get to the point
8 where it is in their favour. We are not concerned
9 so much about that; all we are concerned about is
10 the right to strike on the date of expiration.

11 MR. BOROVY: They bargain about
12 expiry dates anyway, it happens now.

13 MR. POLLOCK: But not for the same
14 purposes.

15 MR. BOROVY: Yes, for the same purposes
16 too.

17 (Mr. McDermott continues reading the brief from "Many
18 of the.." down to "...are 'material')", page 11.)
19

20 MR. POLLOCK: I suppose that would
21 be an easy way for management to get rid of a
22 collective agreement that it didn't want any more,
23 because of changes in economic conditions, your bargain-
24 ing position might not be as strong as when you
25 negotiated that contract and management comes around
26 and says, "All right, we are going to institute some
27 objectionable technological change", and you say, "We
28 are opposed to that and we can't agree and we are
29 putting it in", and two months later the contract comes
30 to an end and you are open and you haven't any contract.

1 You haven't any terms or conditions and management is
2 then free.

3 MR. McDERMOTT: That is an over-
4 simplification to the problem. We still hold
5 certified bargaining rights and they would still be
6 obligated to bargain with us, so they can't dump us
7 by the simple expedient of creating this kind of
8 situation.

9 MR. POLLOCK: But they can bargain
10 with you, but at a time when they know that you are
11 not as strong as you were originally. And the bargain
12 that they will get might be better for them.

13 MR. McDERMOTT: Mr. Pollock, we can't
14 possibly be any weaker than we are now in these
15 situations. Even weak collective bargaining power
16 is better than no bargaining power at all. We have
17 absolutely nothing, zero, right now, except to have
18 the employees go into a wildcat situation.

19 THE COMMISSIONER: You use very strong
20 language in those paragraphs in describing the
21 conditions that give rise to these wildcat strikes,
22 and you give illustrations, a half-dozen illustrations
23 of wildcat strikes and their causes in that sense.
24 It is easy to make these allegations but I would like
25 to have some support for them.

26 MR. McDERMOTT: Sir, we have archives
27 full of these examples where management, for example,
28 unilaterally impose certain standards on the workers,
29 where they have to produce twice as much or one and a
30 half times as much as they were required to do when

1 the collective agreement was executed. We then say
2 to management, inasmuch as we are producing twice
3 as much or three times as much, or whatever the case
4 may be, then we ought to talk about compensation for
5 same. They will not talk about it and they simply,
6 unilaterally impose these matters and if the employee
7 fails to live up to these standards, then he is
8 discharged. That is one example.

9 THE COMMISSIONER: Have you ever
10 seen a case where management doubled the work for
11 a given hour?

12 MR. McDERMOTT: There have been cases
13 where they have done precisely that.

14 THE COMMISSIONER: Can you give the
15 actual case?

16 MR. McDERMOTT: I can't cite the
17 actual case, but I can undertake to give you the
18 actual case.

19 THE COMMISSIONER: That is what I
20 would like to have.

21 MR. McDERMOTT: That is an aggravated
22 example, but there are many cases where the imposition
23 of production standards have materially changed the
24 working conditions of the people involved. This is
25 the common complaint.

26 THE COMMISSIONER: Well, those are the
27 items we would like to have in specific detail.

28 MR. McDERMOTT: There have been occasions,
29 for example, where the Ford Motor Company in Oakville
30 imposed overtime conditions on their people on a

1 unilateral basis where they worked them seven-days
2 a week. This not only has a dramatic effect on the
3 person's worklife, but it also has a very dramatic
4 effect on his domestic and social life.

5 MR. POLLOCK: What are the provisions
6 in the contract relating to these unilateral impositions?

7 MR. McDERMOTT: We are now arguing
8 about the provisions of the contract and what they
9 really mean and this case is in the courts and is
10 being appealed. This went to an abritration hearing
11 and the decision was handed down in our favour and
12 the company appealed it.

13 MR. POLLOCK: That was Judge Lang's
14 decision?

15 MR. McDERMOTT: Yes.

16 MR. POLLOCK: That was in your favour?

17 MR. McDERMOTT: Yes, and then the
18 company appealed the decision of Judge Lang and
19 Judge Lang, I think, threw it back to another arbitrator,
20 Judge Fuller and now Judge Fuller's decision is being
21 appealed by us. That is where it is now.

22 MR. POLLOCK: It involves the
23 interpretation of the Hours and Vacation with Pay Act?

24 MR. McDERMOTT: Yes.

25 MR. POLLOCK: There is a provision
26 in your contract that permits the employer to schedule
27 overtime?

28 MR. McDERMOTT: Yes.

29 MR. POLLOCK: And there is no written-
30 in restriction as to how many hours he will do that?

1 MR. McDERMOTT: In this particular
2 instance, I don't believe there is. Nevertheless,
3 there are certain understandings and common practices
4 that exist between two parties, in which the union
5 will not seek to get specific language covering every
6 contingency, because you'd have a collective agreement
7 this high and you still wouldn't cover them all. But
8 there are certain acceptable conducts or patterns
9 of behaviour which suddenly disappear overnight, and
10 the work place is materially changed as a result of it.

11 MR. BOROVOY: There is also a practice
12 among many arbitrators to interpret collective agree-
13 ments. Their conception is that whatever is not
14 specifically covered by the collective agreement
15 remains within management's exclusive jurisdiction.
16 It is this canon of construction that very often
17 works against the unions in these situations.

18 THE COMMISSIONER: Well, it would
19 seem to be almost unavoidable, wouldn't it? If you
20 can't anticipate situations that may arise which
21 ought to be covered, then there is the likelihood
22 that they will arise.

23 MR. McDERMOTT: But if they do arise,
24 should it not then be the subject of mutual agreement
25 between the parties on collective bargaining, rather
26 than impose the unilateral decision of management.

27 THE COMMISSIONER: Well, you speak
28 there of determining what is material, which is very
29 important.

30 MR. McDERMOTT: That may very well be

1 the subject of an arbitrary award, whether it is
2 material or not.

3 THE COMMISSIONER: Because you do
4 have, not all these items of conduct or relation,
5 but losses and that sort of thing, they are not all
6 material. Some of them may be very minor.

7 MR. BOROVOY: That is why we propose
8 that it be handled in this way.

9 MR. POLLOCK: Of course, this contract
10 that is arrived at by the process of negotiation
11 and bargaining is not a statute. It is a case of
12 "you give me this and I'll give you that and if you
13 don't insist on this, I won't insist on that." So
14 there are many things bargained and sold on the table,
15 one of which might be this material change, a clause
16 affecting that type of thing and that, in exchange
17 for not restricting the rights to do this, contracting
18 out, for example, you get some other benefits, some
19 other additional fringe benefits or actual increased
20 remuneration. When the determination then comes up
21 as to whether they are going to contract out, is it
22 going to be available to the person deciding whether
23 any action ought to be permitted or whether this is
24 a material change to consider all of the aspects
25 of the whole bargaining process, what was talked about,
26 what was exchanged for this and what was the relation-
27 ship at that time. Are you going to keep a record
28 of all these things?

29 MR. BOROVOY: No, I think that is why
30 we confine the recommendation to what is really going

1 to make a material difference in the working conditions.

2 MR. POLLOCK: But this may make a
3 material difference. It may be that you want in
4 your contract, no contracting-out, and management
5 doesn't want to give you an additional 20 cents an
6 hour and you assess your position and you say, "Well,
7 what are the chances today of management contracting-
8 out some work. They haven't done it yet and maybe
9 they won't do it anymore. I'll take the 20 cents today"
10 and the management says, "Okay, here is your 20 cents".
11 Then management, and maybe they knew about it, maybe
12 they had it all planned that they were going to
13 contract-out and they say, "Okay, you signed the
14 agreement, now we are going to contract-out some of
15 this work," or perhaps they didn't know about it and
16 it became available to them and they were permitted
17 to contract it out and they do it.

18 MR. BOROVY: I think most of what
19 we are discussing here comes under the heading of
20 technological change of the kind that often is not
21 anticipated, or at least is very difficult to cope
22 with in advance.

23 MR. POLLOCK: Well, nothing can be
24 more radical in technological changes than complete
25 contracting-out.

26 THE COMMISSIONER: If that is well
27 known, then why can't you stipulate, or set it out
28 in the agreement? You are buying a certain benefit
29 for the surrender of this, or vice versa. There is
30 no difficulty in putting these things in the agreement

1 if you desire them and if they actually take place,
2 and if it is nothing but an exchange of bargaining
3 then the best thing to do is to tell the party to
4 put it in their agreement.

5 MR. McDERMOTT: Well, it isn't always
6 possible to contemplate every situation.

7 THE COMMISSIONER: Well, that may be,
8 and therefore, it shows that it can't be a part of
9 the bargaining if nobody has thought of it.

10 MR. McDERMOTT: We have had examples
11 where they are taking large operations and unilaterally
12 moving them from one location to another. We have
13 anticipated this in the collective agreement by,
14 saying, and you have what you call a transfer clause,
15 which permits the relocation of workers and the
16 transfer of seniority and so on, but that collective
17 agreement is written with a particular corporate
18 entity. So you go to management and say, "You have
19 transferred X number of jobs to this brand new location
20 with its brand new bricks and mortar. Under the
21 collective agreement we have the right to transfer
22 the people", and they say, "Yes, but this collective
23 agreement is with such and such a corporate entity
24 and the one we are transferring it to, even though
25 it is the same people, but it is in fact technically
26 and legally, a different corporate entity and it
27 doesn't apply".

28 THE COMMISSIONER: Well, at least I
29 suppose you can say that when you go through that
30 once, you will not forget it for the future.

1 MR. McDERMOTT: Right, and our point
2 is that the statute does prevent us from taking
3 strike action in the event of such a dispute, even
4 though it may affect the collective interest of the
5 entire bargaining unit. This is what we want to
6 see corrected, as it is in the United States. In
7 the United States it is permissible and in many of
8 our agreements over there, we have the right to
9 strike on certain issues during the life of an agree-
10 ment.

11 MR. POLLOCK: Do you think that you
12 could bargain this type of a provision in the contract?
13 Do you think that your membership would be prepared
14 to go on strike for it?

15 MR. McDERMOTT: I am not going to
16 attempt to be a clairvoyant on that. It would depend
17 on the situation.

18 MR. POLLOCK: Have technological
19 changes just arisen in the last year or two? You
20 must have negotiated some contracts in the shadow
21 of technological changes. Have you attempted any
22 of them to restrict managements' rights?

23 MR. McDERMOTT: Yes, we have, in fact
24 restricted managements' rights. We have designed
25 clauses to anticipate technological changes. We are
26 much more likely to get it in the future than we
27 have in the past because the past practices in the
28 automobile and related industry is for, most of them
29 are American-owned corporations and their tendency
30 is to transfer or at least to locate, the high labour

1 content jobs up here and have the more sophisticated
2 technological machinery located in the States. However,
3 with the introduction of the no-tariff arrangement
4 in the auto-trade pact, this is likely to change and
5 we are likely to have the more sophisticated operations
6 now operating up here so that we will have more
7 difficulty in the future than we have had in the past.

8 THE COMMISSIONER: Have they better
9 methods of training than you have here in this country,
10 such a schools, or whatever they may have?

11 MR. McDERMOTT: Yes, sir, we are sadly
12 lacking over here in this respect.

13 THE COMMISSIONER: Are they supported
14 or created by industry?

15 MR. McDERMOTT: In some instances
16 they are and in some instances we do it on our own.
17 We have technical training centres in the City of
18 Detroit operated by the union and in conjunction
19 and cooperation with other community agencies.

20 (Mr. McDermott continues reading the brief from
21 "Essentially, the approach..." down to its conclusion,
22 "...uncontrolled industrial relocation." on page 12.)

23
24 MR. POLLOCK: Injury to whom?

25 MR. McDERMOTT: Injury to the public
26 in the community, to all of the people who are in
27 some way connected to benefit from the wage earners
28 in that community. They are certainly deprived of
29 their opportunity to earn a living.

30 MR. POLLOCK: I suppose if you take

1 the local community, then the shift of a plant from
2 Windsor to Oakville will detract from Windsor and
3 add to Oakville and they will probably balance off.
4 But if you take the overall affect in the province
5 of Ontario, what is the affect? Is the economy of
6 Ontario adversely affected because of moving to
7 Oakville?

8 MR. McDERMOTT: I am not talking
9 about economy, I am talking about people, the people
10 that are affected, and we had a dramatic illustration
11 of this in Windsor. So you rob Peter to pay Paul.
12 That doesn't make it good and it doesn't make it
13 right.

14 MR. POLLOCK: But it is good for Paul.

15 MR. McDERMOTT: If Paul were the
16 City of Toronto, it may not have any real impact but
17 if, for example, you took the operations from Oakville
18 where there has been an industrial community developed
19 by the Ford Motor Company in Oakville, and if they
20 were to suddenly pull out, you would have a ghost
21 town there, and if they were pulled into Toronto, the
22 material benefit to Paul would be much less than the
23 material loss at Oakville.

24 MR. POLLOCK: What do you do? Do
25 you intervene by subsidy in those cases where the
26 company can't economically operate in a particular
27 community and wants to improve its economic standing
28 by relocating in another area. They don't do it
29 frivolously and they don't do it just for the point
30 of changing from Windsor to Oakville. There must be

1 some economic reason.

2 MR. McDERMOTT: I don't know if they
3 do it frivolously or not.

4 MR. BOROVY: The point of this
5 submission is that neither does a union go on strike
6 frivolously. The point is that if some people are
7 considering imposing restrictions and regulations
8 on the right to strike in the interest of the public,
9 then all we say is, what's sauce for the goose is
10 sauce for the gander. Management's unilateral
11 decision is done not frivolously in its own interests,
12 it should also be controlled and regulated in the
13 interests of the public.

14 MR. POLLOCK: Well, I think in those
15 areas where there have been discussions of compulsory
16 arbitration and where it does exist, I think that
17 management is ^{closely} more /regulated. The management of
18 police forces and firemen, the management of hospitals,
19 the management of Hydro and the management of munici-
20 palities, all those are regulated by and for the
21 public.

22 MR. McDERMOTT: But this is particularly
23 true where this is done during the life of an
24 agreement, because the general purpose of any
25 collective agreement is to establish mutually
26 satisfactory rates and hours worked and conditions
27 for the people in the bargaining unit. We are
28 expected to abide by our obligations in a collective
29 agreement before the term of the agreement. Management,
30 however, with impunity, can pull out, apparently, any

1 time they want. It seems to me that there ought to be
2 some sort of regulation and there ought to be some
3 complementary restriction on management to doing that.

4 MR. POLLOCK: To prevent the runaway
5 shop type of thing.

6 MR. McDERMOTT: Yes.

7 THE COMMISSIONER: Don't they, in
8 fact, make provision for moving families and to
9 assist them in selling their homes and buying new ones?

10 MR. McDERMOTT: No, sir, they do not.
11 In one or two very rare instances we have been
12 successful in negotiating this sort of thing.
13 Predominantly, in most instances, we have not been
14 able to get any such support for people being moved
15 to and from. As a matter of fact, in many cases we
16 are not able to get the right of the people to
17 transfer to the jobs which are taken away from them.

18 MR. POLLOCK: Well, isn't that largely
19 because of this competition between municipalities
20 to get the industry and they say, "All right, we want
21 the industry to come here so that it will build our
22 community and employ our people and we are prepared
23 to give them some kind of municipal concession, as
24 far as water services are concerned. In exchange for
25 that, we want them not to come lock, stock and barrel
26 and tent, we want them to come and take the employment
27 of the people in that community.

28 MR. McDERMOTT: Partly, and in fact
29 that is the common excuse used by management across
30 the table, but I would like to see a small community

1 like Orillia or Oakville, for that matter, bargain
2 with the Ford Motor Company. They have the bargaining
3 power, not the community. And there can be a modified
4 position and there can be a compromise as there is
5 in most collective bargaining situations. In many
6 cases they can employ both people from the community
7 and at the same time allow people to transfer. But
8 in many cases, they just bluntly refuse to even
9 consider the matter. It is an infringement of the
10 old sacred cow of management rights and we dare not
11 talk about it.

12 If I may, Mr. Commissioner, I will turn
13 to the supplementary submission.

14 MR. POLLOCK: Perhaps in relation
15 to the supplement - I don't know whether you want to
16 present it in the same manner. We had an opportunity
17 to consider it and we have also had an opportunity
18 to consider the Australian situation at a closer
19 distance. I don't know what the background of your
20 brief is and some of the conclusions you arrive at
21 are different than some of the ones we have found.

22 MR. McDERMOTT: Well, we don't pretend
23 to be Australian experts but we have read the newspapers
24 and we are somewhat alarmed.

25 MR. POLLOCK: You ought not to be
26 alarmed at anything you read in the newspapers.

27 MR. McDERMOTT: Well, both newspapers
28 have been playing the devil's advocate for a long
29 time and we can read the newspapers and we are
30 somewhat disturbed by the position of the Commission.

1 They appear to be a little enamoured with the Australian,
2 or so-called Australian compulsory arbitration system.

3 THE COMMISSIONER: I don't think
4 that word "enamoured" is in our vocabulary. In some
5 cases we have mentioned certain facts, that is all,
6 and I think it was stated at the outset that we are
7 going to feel free on both sides to speak as we
8 please and to choose the vocabulary that we use,
9 because nothing that is being said here is for any
10 other purpose than to elucidate and ventilate and
11 find out if there are any aspects of industry in
12 other countries, whether they be in Austria or Iceland,
13 which have features from which, on the odd occasion,
14 we might benefit, that is all.

15 MR. McDERMOTT: Well, of course, as
16 I said, we can always speculate, but it appears that
17 the focus is on Australia rather than Austria, because
18 I believe the Commission did go to Australia to examine
19 the situation there. And for that reason, we
20 considered it desirable to present our views to, quite
21 frankly, hastily gather as much information as we
22 could on the Australian situation and to submit our
23 views with respect to any proposition of imposing
24 the so-called Australian system on us Canadian boys.

25 THE COMMISSIONER: All we can ask
26 is for your authority because, admittedly, you haven't
27 personal knowledge of it.

28 MR. POLLOCK: I think you have
29 mentioned in one circumstance, that you refer to
30 Sykes strike law in Australia. Are there any other

1 sources that you relied upon other than that?

2 MR. McDERMOTT: Not unless they are
3 mentioned. You may recognize, Mr. Pollock, a lot
4 of this is taken from an article by Frank Nugent,
5 written, I believe, in 1965 or somewhere around there.

6 THE COMMISSIONER: Where was it
7 published first?

8 MR. McDERMOTT: I am not sure where
9 it was published, but I believe it was a comparison
10 between the United States system and the Australian
11 system and written by Frank Nugent when he was
12 studying at the University of California.

13 MR. POLLOCK: Yes, we are familiar
14 with Mr. Nugent.

15 MR. McDERMOTT: Well, we are in the
16 hands of the Commission. I don't propose to read
17 the entire thing, but perhaps I might read portions,
18 if I may. The point we want to emphasize is that
19 beginning on page 7, the bottom paragraph, beginning
20 with (i):

21 "The system was introduced in Australia
22 as a voluntary system in the 1890's and
23 its compulsory aspects were born of a
24 decade of devastating strikes and a
25 minor depression. The most important
26 strikes were the Great Shearing and
27 Maritime Strikes of the 1890 to 1893 era,
28 all of which were decisively lost by
29 the unions because of the superior
30 economic power of the employers. The

1 court described the Shearers strike
2 and the Shearers Camps that were part
3 of it as almost amounting to a 'civil
4 war' with special militia of constables
5 and all the other instruments of
6 anarchy. It was the unions and not
7 the employers, who in desperation turned
8 to political advancement of their cause
9 by way of the Labour party and had
10 passed ultimately the successive
11 compulsory arbitration Acts in order to
12 bind employers to better minimum
13 conditions of labour."

14 Now, our point there, if I may depart from the text,
15 is that here we have the diametric opposite of the
16 situation here in Canada. The so-called compulsory
17 arbitration system born out of the depression and, in
18 fact, to put it bluntly, urged by an opposition labour
19 party, they weren't the government, they were the
20 official opposition in those days, and in effect, it
21 was an instrument to bail out a group of ineffective
22 and almost bankrupt unions. Now, in Canada we have
23 a diametric opposite where the labour movement, by and
24 large, is healthy. It is strong and it is dynamic.

25 It is our submission that any such
26 system imposed here would not suit the purposes of
27 the Canadian economy or of the industrial relations
28 situation in Canada.

29 MR. POLLOCK: Of course, in 1890 and
30 the turn of the century in Canada, compulsory arbitration

1 was suggested here by the trade union movement as well.
2 History is good to look back on, but what we learn
3 from history is that we never learn from history.

4 MR. McDERMOTT: There might be some
5 unions today who might even favour it. Maybe not
6 publicly but they may favour some form of compulsory
7 arbitration because we do have trade unions who do,
8 in effect, and the railways are an example.

9 THE COMMISSIONER: What are the
10 essential elements of a satisfactory compulsory
11 arbitration settlement of dispute?

12 MR. McDERMOTT: I know not, sir, I
13 don't know.

14 THE COMMISSIONER; Well, you have
15 thought about it. There is the character of the
16 tribunal, the standing that it has in the community
17 and particularly the disrespect of the labour
18 organization. Those are the factors that will determine
19 the acceptability of these findings.

20 MR. McDERMOTT: One of the essential
21 ingredients a tribunal lacks, sir, is this very
22 important question of how far would the employer have
23 gone had the union exercised its economic power
24 against him? And this is one thing that the tribunal
25 would have a lot of difficulty in arriving at.

26 THE COMMISSIONER: Would you mind
27 stating that again?

28 MR. McDERMOTT: What would have been
29 the attitude or how far would the employer have gone
30 if, in fact, instead of going through the adjudication

1 process, the union had, in fact, struck and used its
2 economic power?

3 THE COMMISSIONER: That goes to the
4 point of where does the obligation to resort to
5 arbitration arise. It need not necessarily arise
6 at the termination of your agreement, it may come
7 at any time. Suppose the strike lasts 6 months.
8 Now these are only suggestions of possible situations.
9 Suppose you had a strike and it was a ruinous strike
10 and it was going on indefinitely, just as in the Ford
11 case of 1945. They reached the point where both
12 sides were sick of the strike and they said, "We will
13 accept not arbitration, but the decision of a single
14 man. Now, therefore, the question is, when you say
15 has the union - and suppose it has - it has gone on
16 for six months, would that be a factor in dictating
17 the resort to arbitration?

18 MR. McDERMOTT: It would be a factor,
19 but what happened in 1945 was not compulsory arbitration.

20 THE COMMISSIONER: No, it wasn't.
21 The parties were driven to something by the fact that
22 they had come to a fixed stand from which they
23 couldn't budge unless they agreed on something.

24 MR. McDERMOTT: Well, we do that now
25 in this day and age. We can find ourselves in mutual
26 agreement in 99 per cent of the collective agreement
27 language but we may not agree, for example, on the
28 degree or the extent of union security. We can
29 agree to adjudicate that matter and have it arbitrated
30 and quite often we do. That is something else again

1 from having the whole dispute or the whole collective
2 agreement ----

3 THE COMMISSIONER: What I am saying is,
4 suppose you don't make it from the beginning and you
5 let things go on for 6 months and it is ruinous to
6 both sides. What would you say there to having
7 either party elect for arbitration, as railwaymen
8 did, as against conciliation. You will remember they
9 ultimately worked it out but they made an election
10 to go to arbitration.

11 MR. McDERMOTT: But you see, the
12 railway workers, sir, are secure in the knowledge
13 that they are not going to be permitted to strike
14 anyway.

15 THE COMMISSIONER: That is true.

16 MR. McDERMOTT: They have, in fact,
17 compulsory arbitration, although perhaps it isn't
18 laid down that way. Certainly it is in the Railway
19 Act in the United States, I believe. But what we
20 are talking about from our partisan viewpoint, is
21 the automobile industry and the aerospace industry
22 and the agricultural implement industry and its
23 related operations. We see no place for compulsory
24 arbitration at all in a situation like that. The
25 people that are concerned with the so-called vital
26 services are the people that are concerned with life
27 and limb and national security and so on. They can
28 speak for themselves. We are not in that field. In
29 our case I can see no reason for it.

30 THE COMMISSIONER: Well, that is

1 understood. You are dealing now with what we call
2 a private sector.

3 MR. POLLOCK: That is about the only
4 field that you are in. I think you are in a salt
5 mine in Windsor.

6 MR. McDERMOTT: But the bulk of our
7 membership, of course, is in the three industries
8 that I have named.

9 MR. POLLOCK: Under which of the
10 terms that were suggested by Stan Little are you
11 going to find yourself when they combine?

12 MR. McDERMOTT: I pay no attention to
13 Stan Little's suggestion at all. As an international
14 union, I can't say anything else.

15 MR. POLLOCK: Well, gentlemen, thank
16 you very much. We are obliged for your assistance
17 on the brief and also on the addendum and we will be
18 further obliged if Mr. Borovoy does his homework and
19 dredges up all those matters on that list.

20 The Niagara Industrial Relations
21 Institute, Sharman K. Leary, Q.C., as counsel.

22 Mr. Leary is also appearing for the
23 St. Catharines and District Chamber of Commerce. We
24 might deal with both of these matters together.

25 MR. LEARY: Mr. Commissioner, I will
26 deal with them together. I would point out that the
27 body of both presentations to you is identical.
28 They are only different in the introduction, which
29 explains something of the history of each of the
30 organizations. They are mainly different in that the

1 Chamber of Commerce has a broader spectrum of members
2 and the Institute is largely concerned with members
3 who are employers in manufacturing. The Chamber,
4 as usual, represents people who are in commerce and
5 service industries and the professions. The Chamber
6 has taken an interest in these affairs internally,
7 within their own organization for a good many years.

8 The Institute, on the other hand, is
9 I believe, relatively unique in that it is one of
10 the oldest organizations in the province of Ontario
11 or the Dominion of Canada which has devoted itself
12 exclusively to employer-employee relations problems
13 on behalf of employers.

14 I do not propose, unless the Commission
15 desires it, to read the briefs. I would like to
16 comment, if I may, just shortly and in this fashion.
17 We feel that the background material, which is the
18 second portion of the brief, is important in assessing
19 the problems and that it is important to recognize
20 that the management, union or management employee
21 relationship, in terms of union organization on this
22 continent, is one of relatively short duration, while
23 there have been trade unions for a long, long time
24 on the continent. I think what the last speaker
25 referred to as the rather satisfactory position of
26 the trade unions in Canada in terms of strength and
27 finance and important political influence, is a
28 relatively recent development. This is a major point
29 that we feel should be assessed by this Commission,
30 and that in the rise to that satisfactory state of

1 development, that they have enjoyed rather unique
2 privileges under the law in both the United States
3 and Canada.

4 THE COMMISSIONER: Would you elaborate
5 that just a bit? In what respects?

6 MR. LEARY: Let me start out by
7 dealing with a basic item and that is the basic item
8 of compulsory union recognition which is a part of
9 our law on this continent and is not, as we understand
10 it, a part of the law or the development of trade
11 unions in most countries.

12 THE COMMISSIONER: And when did that
13 come into effect in this province?

14 MR. LEARY: As I recall, Mr. Hepburn
15 appointed a select committee sometime in 1942 and I
16 think that committee reported early in 1943 and, as
17 a result, there was the law that was presided over
18 by Supreme Court judges, and I think that might be
19 stated to be the start of it in Ontario.

20 THE COMMISSIONER: That would be in
21 the forties, that is near enough.

22 MR. LEARY: And very shortly thereafter,
23 that was abandoned.

24 THE COMMISSIONER: Well, prior to that
25 time, and I gather from what you said, there were
26 special privileges or liberties extended to labour?

27 MR. LEARY: I wouldn't say necessarily
28 prior to that time. If they were related to the
29 continent as a whole, I would think that the compulsory
30 regulations started maybe in 1935 ^{or} 1933, perhaps, but

1 effectively in '35 or '37 with the Wagner Act. The
2 other recognitions that they have, for instance, the
3 Rights of Labour Act in the province of Ontario says
4 that they may not be sued.

5 THE COMMISSIONER: Well, didn't that
6 follow from the nature of their organization. They
7 weren't incorporated by law, they were simply like
8 a club in that sense.

9 MR. LEARY: Yes, and I think in that
10 sense that there were, of course, representation type
11 actions but they have grown to a strength where they
12 are no longer clubs.

13 THE COMMISSIONER: That may be, yes,
14 but it seems to me that they were limited in one sense
15 in the organization of their union. They didn't
16 organize by virtue of any law. The only thing that
17 you can say is that the law of combinations in restraint
18 of trade or conspiracy was more or less abolished
19 where those purposes were for the security of labour.

20 MR. LEARY: That I would have to agree
21 with, but I think, and I would not go so far as to
22 say the increase from 4 million to 20 million is
23 all a part of compulsory recognition, I don't think
24 that is so. I think the times in the middle thirties
25 and the plans of the Congress of Industrial Organization
26 also had a part in it but I do say that the favourable
27 compulsory recognition law and what developed by way
28 of boards that were called certificate mills by, perhaps
29 some unkindly people, at least encouraged and enhanced
30 their ability.

1 THE COMMISSIONER: No doubt they did.

2 MR. LEARY: To get bargaining status,
3 yes, and I think this has a definite effect. I suggest,
4 sir, in connection with some of the affairs that are
5 being investigated by this Commission, I saw in the
6 paper last evening or the night before, a statement
7 by an eminent trade union leader in Canada, I think it
8 was Mr. Sefton, who was deploring wildcat strikes and
9 the basis for deploring them was that it upset the
10 bargaining process and took the time of responsible
11 officers away from more important affairs. He
12 indicated in the course of the remarks that it would
13 be hoped that the union membership would become more
14 disciplined. I think this is extremely important
15 because to achieve recognition status in other
16 countries, they really got it because the membership
17 was disciplined, and disciplined to the extent that
18 they would stand together through pretty horrendous
19 affairs.

20 THE COMMISSIONER: I suppose when you
21 catch sight of the power of collectivism, it is like
22 running away with it.

23 MR. POLLOCK: Except that it appears
24 that some of the employers haven't caught sight of
25 the advantages of collectivism. They are only just
26 emerging from that area.

27 MR. LEARY: A matter to be regretted.
28 I recall Mr. Mahoney in a national committee in Canada
29 some 3 or 4 years ago, offered his good offices and
30 experience in organizing the employers and I wish that

1 they might have been able to accept it.

2 THE COMMISSIONER: That shows the
3 strength of ideology.

4 MR. LEARY: And this has resulted in
5 extremely strong organizations. I question a little
6 bit from the paper reports that we have heard of
7 representations made to your Commission, sir, by unions,
8 which seem quite often to be based on some precept
9 that the conditions still existed and they were
10 downtrodden masses and they were ^{weak} unions that needed
11 protection. I think this condition just doesn't exist
12 today in the general form.

13 THE COMMISSIONER: It is pretty hard
14 to wipe out all residual essences. You get that
15 sometimes.

16 MR. LEARY: Yes, but it is a main
17 point of these briefs that the background, against
18 which we feel it should be asserted this is
19 a relatively rapid growth, in that a trade union
20 cannot deplore that the membership was not disciplined.

21 We suggest this lack of discipline is a natural
22 thing with a growth as rapid as has been the case
23 in the trade union movement on this continent in the
24 last 25 years.

25 THE COMMISSIONER: And I suppose you
26 have to keep in mind it is not a justification but
27 an explanation, the way this savage condition, out
28 of which it emerged....

29 MR. LEARY: Yes, and I personally am
30 prepared to accept that entirely. And I think that

1 perhaps this was implicit in my statement that when
2 the C.I.O. started in the mid-thirties that this was
3 a tremendous impetus which I indicated was enhanced
4 by compulsory recognition. There is no doubt that
5 the views and desires and aspirations of Mr. Lewis
6 and Mr. Dublinski and Mr. Hillman, who had the idea
7 of the C.I.O. and put up the dollars to finance it,
8 were based on the conditions which you elude to, there
9 is no doubt of this at all. But my point is that
10 when that was all done, for instance, even in the big
11 motor car companies about which we have been hearing
12 this morning, when there finally was recognition, it
13 was a one-page agreement signed in the Book Cadillac
14 Hotel, and the title pages were more pages than one,
15 because they only recognized certain of the plants
16 and certain of the employees and certain of the plants
17 in the first agreement. Really all it was was an
18 agreement to recognize and bargain with the union
19 for six months and that is as long ago as that, 30 years
20 ago, and there was reference earlier today to agreements
21 of this size. Now the motor car agreements as I
22 remember, in my office, for one company in Canada are
23 that size if you take in the master agreement and local
24 agreements for all the local plant locations and the
25 initial agreement, the skilled trade agreement and
26 the pension agreement and so on, this is about the
27 size of the pile now. That is the transition that
28 we have had in 30 years, from a two line document.

29 One other area, Mr. Commissioner, in
30 our recommendations to you, we do recommend that there

1 be freedom of the parties in connection with strikes
2 and lock-outs. We do recommend, sir, that in the
3 area of public service, that should it be felt that
4 there should be some extension of compulsory arbitration,
5 that the approach be that of the hospital legislation
6 as opposed to that of the police and fireman legislation,
7 which at least in the short time that the hospital
8 legislation has been in effect has not had the effect
9 of negating collective bargaining which we believe has
10 been the result with police and firemen.

11 THE COMMISSIONER: I don't quite follow
12 that.

13 MR. LEARY: The approach in the hospital
14 legislation is that the parties should go through a
15 normal bargaining and conciliation process before
16 going to arbitration. In other words, there is not
17 arbitration at the end of bargaining as in the police
18 and firemen and I think too often in the police and
19 firemen, they might find in a preliminary meeting,
20 even in discussion, they say, "Okay, arbitration".
21 This, as we understand it, has not been the case under
22 the hospital legislation and it happens that we have
23 some active part in that and, as a matter of fact,
24 perhaps an active part in the commission preceding
25 the legislation and recommendations regarding the
26 legislation. And I am very happy that the 2 or 3
27 major unions who are involved and who would be building
28 service, international operating engineers, all are
29 still getting agreements at the bargaining table.
30 As a matter of fact, we have had a couple quite recently.

1 They have negotiated freely at the bargaining table
2 with no threat of arbitration on the table.

3 MR. POLLOCK: I think the figures
4 that were suggested to us were by the building service
5 and in their experience, over 70 per cent of the
6 contracts that they had signed were the result of
7 collective bargaining without reference to arbitration.

8 MR. LEARY: My impression is that
9 the figures are at least of that order, sir. We
10 concluded a negotiation for a fairly large hospital
11 quite recently and we have a rather good record at
12 that hospital. And we settled it in two meetings,
13 long meetings, but good long meetings of give and take.
14 I think there was respect on both sides and it was
15 one of the most desirable types of collective bargaining
16 relationships that only work on both sides can
17 accomplish.

18 THE COMMISSIONER: You see, in those
19 circumstances you don't have that shadow over you of
20 profits to be looked for. These are public services
21 and I don't see any reason why there should be very much
22 difficulty in arriving at an acceptable level.

23 MR. LEARY: If there is not the profit
24 motive. There is a body at Queen's Park that is
25 looking over shoulders pretty carefully. But there
26 are other elements, the nature of which I am not
27 prepared to talk about publicly, that make some vexing
28 problems at the bargaining tables, vexing problems
29 in terms of what are adequate conditions of work.
30 There are very special problems for hospitals in

1 this area, so that they can quite often, in some cases
2 they can become rather vicious negotiations as there
3 have been some cases. But even where there is good
4 will, there are rather serious problems to try and
5 get satisfactorily settled.

6 THE COMMISSIONER: Other than money?

7 MR. LEARY: Money and working
8 conditions, sir. The working conditions in hospital
9 are quite different from those in industry or other,
10 what you might call municipal employment. There is,
11 again a different, a growing difference in the nature
12 of the enterprise. Many hospitals outside of big
13 cities, a few years ago, were relatively simple
14 cottage installations where a person might go to bed.
15 Many, many cities throughout the province have large
16 sophisticated complex operations where they can handle
17 almost all kinds of cases and this requires different
18 help and different classes of help than were employed
19 ten years ago.

20 THE COMMISSIONER: Is there a tendency
21 to furnish most of the hospitals with all of these
22 latest instruments or whatever articles or devices
23 or technical resources that we have insisted upon?

24 MR. LEARY: More so every day, sir.
25 If I can give a specific example, I happened to attend
26 a meeting only because I was waiting to make a bargaining
27 report to a Board of Directors, or a Board of Governors
28 at a hospital and I heard them discussing quite calmly
29 that they would have to spend \$50 thousand for certain
30 basic equipment for their operating room for a brain

1 specialist if they wanted to keep him in the town.

2 Now they wanted to keep him in the town and, as a matter
3 of fact, it is a matter of public record that several
4 sensational situations have only been cured by reason
5 of him being there. Now, he cannot function without
6 the necessary equipment.

7 THE COMMISSIONER: But wouldn't that
8 depend on population and the nearness to metropolitan
9 centres?

10 MR. LEARY: I think it would but I
11 would make a guess without any knowledge, sir, that
12 15 years ago, such services were not available in the
13 Province of Ontario except in the City of Toronto,
14 and I would guess that there must be 15 centres now.

15 THE COMMISSIONER: Well, it is building
16 a medical school in every city, it would be ludicrous
17 and simply goes beyond financial power or the capacity
18 of the people in the province.

19 MR. LEARY: It may well be doing but
20 it is

21 MR. POLLOCK: Well, civic pride
22 people have to pay for civic pride.

23 MR. LEARY: Well, that may be but he
24 has performed some unusual services by reason of his
25 presence in the town. That is really the only comment
26 we have to make with regard to the right to strike.

27 With regard to picketing, we have made
28 the statement that the unions are requesting that
29 picketing should be established as being a legal
30 activity in some positive form.

1 MR. POLLOCK: Can I ask a question
2 arising out of the second recommendation that you make
3 on page 6 with relation to picketing where you say
4 that "Such rights should exceed the accepted formula
5 by a handful of employees to pass information. It
6 should be possible for the union to have sufficient
7 people to show the solidarity". Then you provide
8 further on that they will lose this right of mass
9 picketing if there is any interference with ingress
10 and egress to the premises of persons or material. I
11 take it that is physical interference?

12 MR. LEARY: Yes.

13 MR. POLLOCK: Any assault or damage
14 to property or obstruction to traffic. Now we have
15 heard this morning that in any group of people there
16 may be those who are not as responsible as others and
17 that one or two may participate in an activity that
18 isn't sanctioned by the others. Are you saying that
19 if we have one person who is a hot-headed individual
20 starting a fight, that everybody is to be penalized
21 by his act?

22 MR. LEARY: I think I would have to say
23 that the answer to that should be a flat, no. But I
24 must also express the opinion that I think experience
25 indicates that that is rarely the case.

26 MR. POLLOCK: You are talking more of
27 the concerted effort of the whole group to cause damage
28 to property or to interfere with ingress and egress.
29 It is not the isolated one or two individuals who are,
30 in many cases, present on the line and as soon as their

1 presence is known to the organizers of the picket line,
2 they are, in fact, spirited off in the manner described
3 to us earlier.

4 MR. LEARY: Well, to the extent that
5 occurs and to the extent that it is an individual,
6 I think the answer would be, no. Should he have -
7 it has occurred - bombed the plant and killed seven
8 picketers, then I think that might be different. But
9 if this were some small act by an individual, the
10 answer is no.

11 MR. POLLOCK: Well, even if it is a
12 large act by an individual, isn't the determining
13 factor the individuality of his action?

14 MR. LEARY: Well, that might be argued
15 as a legal right but I believe in the context in which
16 these things normally occur, where union leaders are
17 through all the media expressing the justness and the
18 rightness of the cause, and I suggest on occasion
19 that the rightness of the cause justifies any kind
20 of action, then, in that context, I say, no. If it
21 is - and we were discussing the legal rights of an
22 individual, as opposed to an organization, or being
23 a part of an organization - I would have to agree with
24 you, but in the context in which it normally happens
25 in these affairs, I think one must be careful.

26 MR. POLLOCK: I suppose, and it has
27 been suggested to us from another source, that this
28 articulation of the size of the picket line in larger
29 than token picketing, or larger than token numbers,
30 if you say that you can do this, unless something happens,

1 there is an encouragement in the union and those people
2 participating to ensure that something doesn't happen.

3 MR. LEARY: This is what we would hope.

4 MR. POLLOCK: And the way it stands
5 now they say, "Well, even if we don't do anything
6 they can still get an injunction and reduce our numbers,
7 so we may as well do something.

8 MR. LEARY: Well, there were other
9 recommendations in this connection and that is to
10 rescind the Rights of Labour Act which would then,
11 perhaps, lessen the inclination of the leaders to
12 incite persons in that position on the picket line
13 to do these things. Because then, what were described
14 as adequate resources would be subject to paying the
15 price which other citizens and other organizations
16 have to pay for improper or illegal actions.

17 MR. POLLOCK: You would have to relate
18 the complaint of ^{the} act very closely to the union to make
19 that applicable unless you are going to say that the
20 union has absolute liability for any actions of its
21 members. The difficulty that the union has in these
22 circumstances is that it has no, or little control
23 who is heard in the plant and in most agreement, little
24 or not control over who becomes a member of the union.
25 They are, I suppose, taking pot luck, so to speak
26 and they might get put into the position of having
27 to make their treasuries liable for the activities
28 unsanctioned, unauthorized.

29 MR. LEARY: Well, I think, sir, this
30 gets back to our original point that, yes, they do

1 have such persons and, as the statement was made in
2 the press yesterday, they have undisciplined members
3 and I think that this is a major part of this problem
4 and the major reason for the problems before this
5 Commission.

6 THE COMMISSIONER: Well, you can put
7 a duty on them to do their best at least.

8 MR. LEARY: Well, I think that that
9 duty would not have been lived up to if, literally,
10 there had been inflammatory statements. This is
11 the nature of it, and it is all very well - and may
12 I make one comment? I am going to comment on the law
13 enforcement. Fortunately, I have been connected with
14 very few strikes and thank goodness most of them have
15 been real long strikes because short strikes don't
16 generally make much sense because one party or the
17 other should have known their mind in advance. And
18 I must say that law enforcement in the St. Catharines'
19 area has been of a rather superior order. The previous
20 speaker mentioned something about a special group
21 within the police in the City of Toronto and that a
22 similar function exists in this area. On the one
23 occasion that I know of in the last ten years, when
24 things looked as if they were going to get out of
25 hand, the Mayor read the Riot Act and a very dangerous
26 situation was brought under control, so I must
27 preface my remarks by saying perhaps we have less to
28 complain of in St. Catharines.

29 THE COMMISSIONER: What is your
30 population?

1 MR. LEARY: About 100 thousand. But I
2 think it is a fact that it is too easy to say as to
3 the unions, "Well, the police are there, they should
4 act". This is almost an impossibility. I lived
5 through a strike in Kirkland Lake. In addition to
6 the local police force, which was an adequate one for
7 a community of 25 thousand at the time and which,
8 incidentally, had the first police force in North
9 America with radios in them at that time, they had
10 135 provincial police, as I remember. It was almost
11 impossible to move out of any building in the town
12 during the daytime, without being in the sight of a
13 provincial policeman. Yet, there were hundreds and
14 hundreds and hundreds of occasions where there was
15 assault, just dealing with assault on the person,
16 there were hundreds of cases of slashed tires and
17 sugar in gas tanks and that sort of thing, purely
18 against the person and the private individual's assets
19 as opposed to company property. And, if my memory
20 serves me correctly, there were 70 odd cases eventually
21 went to Magistrates Court, arising out of all these
22 breaches of the law. And there were uniform acquittals
23 of all of the persons so charged, except one unfortunate
24 young lady, who happened to have a coat that she had
25 made out of various Hudson Bay blankets, and it was
26 the only one in the community and they were able to
27 identify her as the person who threw pepper in a man's
28 eyes. Now these are the facts of life with regard
29 to the question of normal law enforcement people, even
30 a special law enforcement group in there at that time,

1 was powerless to either stop or convict in the face
2 of, as I say, hundreds of breaches of our normal law.

3 THE COMMISSIONER: What would have
4 been the likely result of bringing in outside magistrates?

5 MR. LEARY: I don't think the outside
6 magistrates would have made the difference, sir, in
7 my opinion. Perhaps I should also state that I have
8 never been in court in my life and I don't intend to
9 be. However, I was an observer at some of these cases
10 and it was a plain fact that the police just didn't
11 have proof that would satisfy, I would suggest, any
12 tribunal under our present code of a person being
13 innocent until proven guilty beyond a reasonable doubt.
14 These were properly acquitted.

15 THE COMMISSIONER: Would the victims
16 have had something to say about it?

17 MR. LEARY: Yes, but a good many of
18 these occurred at night and a good many of them
19 occurred - there was more than one person and it was
20 a question of who did what, and only one of them
21 perhaps being identified.

22 THE COMMISSIONER: And did all of
23 these things occur between employees?

24 MR. LEARY: All of the ones that I
25 am referring to.

26 THE COMMISSIONER: How many men were
27 on strike at that time? What company was struck?

28 MR. LEARY: All of the gold mines in
29 Kirkland Lake were on strike at that time.

30 THE COMMISSIONER: How many employees

1 were involved?

2 MR. LEARY: I think 12 gold mines
3 were involved in, I think it was somewhere between
4 6 and 7000 men, all of the prime employment.

5 THE COMMISSIONER: Well, they all
6 didn't know each other.

7 MR. LEARY: Not in terms of being
8 in a 25 thousand population community, and a community
9 in which people drifted from town to town so that it
10 wasn't a stable population.

11 THE COMMISSIONER: Perhaps that is what
12 produces good hockey players.

13 MR. LEARY: It did produce some good
14 ones at that time, sir. But I do make the point, sir,
15 that we are prepared to look at some positive
16 authorization for picketing and something beyond token
17 picketing, but frankly, recognize the reality of the
18 situation only if it were tied to some other elements,
19 one of which is the type of strike and one of which
20 is the question of damage occurring and one of which
21 is the Labour Act being rescinded and the last is
22 some sort of a specialized provincial law enforcement
23 group that would be at least available to try and
24 assist in what is, frankly, an almost impossible
25 situation.

26 MR. POLLOCK: Well, there would be,
27 I take it, from your suggestion, some method whereby
28 the union could absolve itself from the responsibility
29 of some of the acts of its members, either by saying
30 or establishing that it certainly didn't authorize it

1 and it didn't encourage it and that those members who
2 did participate in it were disciplined by either
3 suspension or fine or whatever the remedies available
4 to the union are. It is not enough to say, "Well, it
5 wasn't our people", or "We didn't want them to do this",
6 they would have to take some overt act of deprecation
7 to avoid any responsibility.

8 MR. LEARY: Yes, and I suppose there
9 would be difficulties, quite practical difficulties.
10 They would have to develop some jurisprudence in connection
11 with it, some difficulties in the level of authority
12 of the persons involved from the Canadian head of it
13 down perhaps to the local steward in Department X.
14 And some greater obligations at various levels and I
15 hope that jurisprudence would develop in connection
16 with it.

17 MR. POLLOCK: Turning now, I think,
18 to the next point chronologically, is the question of
19 injunctions. The biggest objection to injunctions that
20 is raised by unions appears to me to be the one
21 that says "injunction is obtained to provide an umbrella
22 for the employer to hire strike breakers." Now, when
23 employers are discussing these matters, the incidents
24 that they always elude to are those when access to the
25 plant of vital employees is denied. Office employees
26 working on payrolls or engineering people or cases
27 where there is going to be irreparable damage to a
28 mine because of flooding and they can't get repair
29 people in, or where there has been the possibility
30 of total destruction of the premises to the detriment

1 of all. Those are the one kind of injunctions
2 referred to by employers and the others, of course,
3 are the ones that involve mass rioting and this kind
4 of thing, which clearly amount, in themselves, to
5 crimes and could, I suppose result in prosecution.
6 But aside from the second group, the first one is the
7 one that they talk about. The unions don't talk
8 about those, they talk about the strike breaker ones.
9 Now, what is the answer to the union complaint that
10 strike breakers are being employed by virtue of the
11 injunction?

12 MR. LEARY: I am not sure that we have
13 an answer to that, and in our last comment to you,
14 sir, which I wanted to make plain, was made from a
15 feeling of not having sufficient information to come
16 before this tribunal. It is our opinion that while
17 that is nice to talk about from the union side, that
18 frankly, as a practical matter, it extremely rarely
19 exists. I don't think that without a very, very
20 searching analysis of all of the injunctions and the
21 results of them in the situations that existed, can
22 we talk about it. And even if we get that, we suspect
23 that the number of cases that are involved in that area
24 are miniscule.

25 MR. POLLOCK: Well, I think the fact
26 that it does occur and that the knowledge spreads,
27 that these types of things happen, then the fear or
28 frustrations are generated, even though they aren't
29 happening in the particular case. There are cases
30 with which I am familiar, where there is no violence of

1 any great extent, and there wasn't mass picketing in
2 the sense of thousands of people, there were 25 people,
3 most of them women. There were some cases where an
4 employer's automobile was stopped and he was asked
5 a question, talked to, and they were termed scabs,
6 and other epithets were hurled at the various other
7 people. An injunction was obtained and the employer
8 then wrote a letter to all the employees saying that
9 "We've got this injunction and it shows that your
10 activities were illegal and we are going to employ
11 and continue to employ other personnel until you
12 are in a position where we don't need you anymore. So
13 that, if you want to get back to work, you had better
14 come back today". That tactic is not uncommon.

15 MR. LEARY: Well, at least in my
16 experience, I would say that it is uncommon to the
17 point that whatever happens in those cases should
18 literally have no influence on the laws and regulations
19 dealing with what I suggest are 99 and 44/100ths per
20 cent of the affairs that make up management relations,
21 any more than I would be in favour of indicting the
22 entire trade union movement for what are obviously
23 some completely irresponsible acts of some of its
24 officers or units.

25 THE COMMISSIONER: There is no doubt
26 that strike breakers can go to a plant with two signs
27 "This place is on strike", more easily than if there
28 were 200. At least subjectively there is no doubt
29 that the presence of a mass does intimidate, and I
30 don't care who the man is, he may be able to face it out,

1 but it will have some affect on him.

2 MR. LEARY: Yes, I cannot disagree,
3 and the use of the word intimidation is perhaps an
4 apt one, but one of the problems that relates to this
5 problem, because it does amount at that stage to
6 intimidation, but I think that the number of
7 occurrences of that order, so far as we have any
8 knowledge of, literally are, as I say, such a small
9 part of it as to indicate that they should not be.

10 THE COMMISSIONER: Well, take the
11 strikes that you have seen in St.Catharines. How
12 many in the last 3 or 4 years have there been - strikes
13 - in that city?

14 MR. LEARY: I think 3 or 4.

15 THE COMMISSIONER: And what would be
16 the working force generally, the average working
17 force in each one of the plants?

18 MR. LEARY: I think one was about 25
19 and one was about 55 and one was about a thousand
20 and one was about 4 or 500.

21 THE COMMISSIONER: Well, take the
22 thousand, what happened there? Was the plant closed
23 down?

24 MR. LEARY: Yes. It is not quite
25 proper to say that but production was closed down
26 and some other work went on within the plant.

27 THE COMMISSIONER: But production was
28 stopped and it was a strike against the production
29 that was really affected?

30 MR. LEARY: Yes, it was effective in

1 that way.

2 THE COMMISSIONER: Well, the strikers
3 evidently held together and they were in a position
4 there to maintain and enjoy that striking position
5 for the necessary length of time.

6 MR. LEARY: Yes.

7 THE COMMISSIONER: So your picket line
8 there was simply superfluous?

9 MR. LEARY: With regard to the main
10 objective of shutting down production, yes.

11 MR. POLLOCK: Was there picketing there?

12 MR. LEARY: Yes.

13 MR. POLLOCK: In what numbers?

14 MR. LEARY: As I remember, it varied
15 but I think the minimum numbers were something like
16 the order of 50 and 3 or 4 times that on occasion.

17 MR. POLLOCK: Was there any violence
18 on the picket line?

19 MR. LEARY: No.

20 THE COMMISSIONER: Did they attempt
21 in any way to hold ^{up} the entrance to the plant?

22 MR. LEARY: No.

23 THE COMMISSIONER: Take the situation
24 with the 500-employee plant. What was the situation
25 there?

26 MR. LEARY: The same situation there.
27 The plant closed and the production stopped.

28 THE COMMISSIONER: When you got down
29 to the 25, what kind of a business was that?

30 MR. LEARY: One was a quarry that

1 was shut down and the other was a planing mill and
2 it was shut down for a while and then it started back
3 up again.

4 THE COMMISSIONER: It was the plant
5 of 50? It was the quarry?

6 MR. LEARY: It was the quarry, yes.

7 THE COMMISSIONER: What was the result
8 of that? Did the whole force go off work?

9 MR. LEARY: At the quarry, yes.

10 THE COMMISSIONER: Did they remain
11 off?

12 MR. LEARY: Yes, they did.

13 THE COMMISSIONER: What was the result
14 of the strike?

15 MR. LEARY: They eventually had a
16 collective agreement signed and they went back to work.

17 THE COMMISSIONER: There were no
18 strike breakers?

19 MR. LEARY: There was no attempt made
20 to operate, no.

21 THE COMMISSIONER: What about the 25,
22 was there any attempt made there?

23 MR. LEARY: Yes, after 10 days to
24 2 weeks the plant started operating again.

25 THE COMMISSIONER: With people coming
26 int?

27 MR. LEARY: That is right.

28 THE COMMISSIONER: And there was no
29 injunction there?

30 MR. LEARY: There was no injunction in

1 connection with the strike at that location. The
2 union attempted to strike other locations and I
3 believe there was an injunction issued in connection
4 with one of those activities.

5 THE COMMISSIONER: Owned by the same
6 company?

7 MR. LEARY: No, this company is a
8 lumber and planing mill company and they were delivering
9 certain materials to another job.

10 THE COMMISSIONER: And they picketed
11 the other job?

12 MR. LEARY: Yes.

13 THE COMMISSIONER: In the result of
14 the original workers, how many returned to work? Or
15 did any?

16 MR. LEARY: The end result of that
17 strike, sir, was that senior officers of a union
18 came in, expelled the union official with whom we
19 had been dealing and signed an agreement at the terms
20 which had been offered some 4 months before, and
21 signed an agreement with regard to the number of
22 persons that were coming back, which was about half
23 the original work force. The others had moved away.

24 THE COMMISSIONER: And the other half
25 had the positions filled by strike breakers?

26 MR. LEARY: Partly that and some
27 of them had moved away because of dissatisfaction
28 with the strike and some of them had gotten other
29 jobs.

30 THE COMMISSIONER: Well, that is

1 interesting from the point of view of what does
2 arise when you have smaller numbers in the working
3 force.

4 MR. LEARY: Yes, I might say that
5 this was a rather unusual end result for a strike,
6 and I think it is a fact and it should not be overlooked,
7 sir, as we mention in here, that many, many of the
8 bargaining relationships that exist in fact now, have
9 the employer as the weaker party visa vis the larger
10 international union. It is all very well to talk
11 about some of the extremely large companies and the
12 relationships that exist, but the majority of
13 relationships now - and I am sorry I don't have the
14 figures in the kind of research we talked about - but
15 I would think by far the majority of bargaining
16 relationships and by far the majority of employers
17 covering by collective agreements, in fact, as at this
18 year, in the 25 year development that we talk about
19 in this brief, the union is the stronger party,
20 stronger party in terms of assets, stronger party,
21 perhaps, in terms of representation, information,
22 training, on the subject of labour relations.

23 THE COMMISSIONER: But they do come
24 to agreements.

25 MR. LEARY: Yes, they do in the majority
26 of cases.

27 THE COMMISSIONER: And take the case
28 of the mill. Those were men of some advanced skills.
29 They would be skilled men in that plant?

30 MR. LEARY: Yes, definitely.

1 THE COMMISSIONER: Was it easy to get
2 replacements with equal skill?

3 MR. LEARY: I would think not.

4 THE COMMISSIONER: So these are the
5 factors that will determine, really, the length of
6 endurance and the ability to defeat the strike by
7 bringing in other people. It may be that they can't
8 get other people.

9 MR. LEARY: Oh, yes. I would likely
10 number at no less than 1000, the elements that I have
11 considered with management in assessing their willingness
12 to take a strike. It is not an uncomplex business.
13 I would think the number of individual considerations
14 would run in that area.

15 THE COMMISSIONER: When you mention
16 1000, what are you referring to?

17 MR. LEARY: I am referring to such
18 matters as these; how full are the pipe lines to
19 our customers, where are these goods in terms of
20 our plant or the hands of our customers, how can we
21 get our goods into those pipe lines to our customers
22 without having them produced at facility A? Can
23 we import them? Can we have them manufactured by
24 another company on contract? Can we have them
25 manufactured by some affiliated company?

26 THE COMMISSIONER: And what is the
27 evidence of willingness on the part of others to
28 cooperate for temporary purposes?

29 MR. LEARY: I think this again varies
30 all over the lot, sir. Sometimes, commercially, it may

1 be against the interest of another company to assist
2 you and on the other hand, on other occasions they
3 may decide that it is beneficial.

4 THE COMMISSIONER: Yes, you don't have
5 the union loyalty.

6 MR. POLLOCK: Greed is a many splendoured
7 thing.

8 MR. LEARY: Yes, sir, and you will find,
9 and I was reading with interest the other day, the
10 tire companies, some of whom are on strike in the States
11 now, have evolved some other mutual assistance pact
12 not much different from the Teamsters' and the construc-
13 tion unions, and this is maybe the 5th or 6th such
14 group that has developed on this continent in the last
15 25 years. These times are changing times and as you
16 already know, and as we remind you, they are really
17 very quickly changing times in terms of the employer-
18 employee relationship.

19 THE COMMISSIONER: Is the tendency
20 in your district to organize unions with association
21 with international groups or with Canadian groups?

22 MR. LEARY: I think we are almost
23 exclusively international, with the exception of the
24 public service employees which are national.

25 THE COMMISSIONER: Is that due somewhat
26 to the proximity to the United States?

27 MR. LEARY: No, I think it is a
28 general Ontario pattern.

29 MR. POLLOCK: It is just that there
30 aren't that many national unaffiliated unions?

1 MR. LEARY: Very few of them anymore.

2 MR. POLLOCK: There may be in your
3 area, some directly chartered locals of the Canadian
4 Labour Congress.

5 MR. LEARY: There are very few left.
6 At the time the new congress was established, many
7 of those charters were assigned to the jurisdiction
8 of a specific international and I can think of several
9 which, since the new Canadian Congress, which is based
10 under C.I.O. or A.F. of L., or whatever they call it in
11 the States.

12 THE COMMISSIONER: What was the most
13 important factor influencing that?

14 MR. LEARY: I think the reason the
15 independents were there in the first place was just
16 the fact that a union organizer walked through sometime
17 and organized them in the past sometime.

18 THE COMMISSIONER: But why would the
19 organized associate themselves with the international
20 rather than the national?

21 MR. LEARY: I think this is a purely
22 Canadian Labour Congress move. They just said, "Let
23 us get these people" and I think your counsel referred
24 this morning to Mr. Stan Little's idea of ten unions.
25 It was merely a move within the Congress to get the
26 directly chartered locals into one of the constituent
27 elements that made up the congress.

28 THE COMMISSIONER: I am speaking
29 particularly of the association of the International
30 Union.

1 MR. LEARY: I think the employees -
2 I am not sure that they had a lot of choice.

3 THE COMMISSIONER: I was wondering
4 if it was the financial strength of the international
5 union?

6 MR. LEARY: I have no idea.

7 MR. POLLOCK: I would think it would
8 be the finances and the administration and all of the
9 other factors.

10 MR. LEARY: I can give you one example
11 that I know of. There was an old chartered local
12 which was, by the new Congress, assigned to the Chemical
13 Workers, as I remember, and the Chemical Worker people
14 came over with the people who had been servicing them
15 from the Congress, explained what they wanted to do
16 and the employees voted and it was just an automatic
17 thing that they changed from a Congress local to the
18 I.C.W.

19 MR. POLLOCK: Well, we don't have any
20 more questions, Mr. Leary. It has been very
21 interesting, some of the comments we have discussed
22 and some of the positions that you have taken. It is
23 a few steps forward on a long and twisted road.

24 MR. LEARY: It is, yes, and in the
25 fourth item that we only refer to, we deplore the
26 fact that the Commission in the urgency of the
27 situation, requires the Commission to start without
28 an amount of basic research that seems to us to be
29 so important. We thank you very much, sir.

30 MR. POLLOCK: The Commission is

1 adjourned until 10:00 o'clock tomorrow morning.

2 Thank you.

3 ---Adjournment.

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